

EXAMINATION UNDER OATH OF:

BENTLEY HUGIE

March 9, 2015

Bentley Hugie, called for oral examination by counsel, pursuant to Subpoena, at the Bennett Federal Building, 125 South State Street, Salt Lake City, Utah, before Vickie Larsen, CSR/RMR, of Capital Reporting Company, a Notary Public in and for the Commonwealth of Utah, beginning at 9:00 a.m., when were present of behalf of the respective parties:

1 A P P E A R A N C E S

2

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Also Present:

13 Anthony J. Miller

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(Exhibits attached to transcript.)

1 P R O C E E D I N G S

2 (Exhibits 1-6 were marked for identification.)

3 BENTLEY HUGIE,

4 called as a witness, having been duly sworn,

5 was examined and testified as follows:

6 EXAMINATION

7 BY MS. CABALLERO:

8 Q. Please state your name for the record.

9 A. Bentley Craig Hugie.

10 Q. Mr. Hugie, I'm Kathryn Caballero. I'm  
11 an attorney with the Office of Civil Enforcement  
12 at the Environment Protection Agency in  
13 Washington, D.C. With me today I have my  
14 colleague, Tony Miller.

15 MS. CABALLERO: Mr. Clarkson, could  
16 you please make an appearance for the record.

17 MR. CLARKSON: My name's Barry  
18 Clarkson from the firm of Clarkson Draper &  
19 Beckstrom. I represent H&S Performance.

20 Q. BY MS. CABALLERO: Mr. Hugie, you're  
21 appearing today pursuant to subpoena, correct?

22 A. Correct.

23 Q. And I'd like to provide you a copy of  
24 the subpoena. This is marked as Exhibit 1.

25 Have you ever been deposed before?

1           A.       I have not.

2           Q.       This is not an endurance contest. If  
3 you don't understand a question that I'm going to  
4 ask you, please let me know and I'll rephrase so  
5 that it's clearly understandable.

6                   All questions need to be answered with  
7 a verbal response as the court reporter cannot  
8 record a head shake.

9           A.       Got you.

10          Q.       If you need to take a break at any  
11 time, please let me know, we'd be happy to take a  
12 break.

13                   Today do you know whether you'll be  
14 claiming any testimony as business confidential,  
15 that public disclosure of the information would  
16 divulge methods or processes entitled to  
17 protection as trade secrets?

18          A.       I will not.

19          Q.       Can you state your address?

20          A.       My home address?

21          Q.       Yes, please.

22          A.       3022 Limestone Drive, St. George, Utah  
23 84790.

24          Q.       And you work for the company H&S?

25          A.       I do.

1 Q. And what is your position there?

2 A. I do product development. Mostly  
3 product testing.

4 Q. And how long have you worked there?

5 A. The company started in 2008, I  
6 believe, to the best of my knowledge.

7 Q. And since 2008 have you only worked in  
8 product developmental?

9 A. Yeah. I mean, I have a variety of  
10 jobs at the business.

11 Q. Can you describe the other jobs.

12 A. Anything from cleaning toilets to  
13 whatever needs to be done day to day.

14 Q. Okay. Prior to 2008 did you have  
15 another job?

16 A. Yes.

17 Q. And what was that?

18 A. I owned a company called Extreme  
19 Accessories doing aftermarket automotive  
20 installations of products similar to what we  
21 manufacture now.

22 Q. How long did you work at Extreme  
23 Accessories?

24 A. I owned that for perhaps 4 or 5 years.

25 Q. So from approximately 2003 to 2008 --



1 A. Correct.

2 Q. -- you were working at Extreme

3 Accessories?

4 A. Yes.

5 Q. You were the owner of that business?

6 A. Yes.

7 Q. Prior to 2003 did you have a position

8 with another company?

9 A. Yes.

10 Q. And what was that?

11 A. I was an installer of automotive

12 aftermarket parts.

13 Q. And approximately how long did you do

14 that for?

15 A. Year and a half.

16 Q. So would it be fair to say from about

17 the middle of 2001 to 2003?

18 A. Yep.

19 Q. Prior to 2001 did you hold another

20 position at the company?

21 A. Yes, a part-time position.

22 Q. And what was that?

23 A. It was a -- we call it a general help

24 at a sign shop.

25 Q. Say that again.

1           A.       General help. Just -- I painted signs  
2 or helped someone in the backroom assemble metal  
3 signs.

4           Q.       And for how long did you have that  
5 position?

6           A.       A year.

7           Q.       So approximately 2000 to 2001?

8           A.       Correct.

9           Q.       Prior to 2000 did you hold another  
10 position at a company?

11          A.       Nope.

12          Q.       Okay. So it was your first job, then,  
13 in the 2000 time frame?

14          A.       Yep.

15          Q.       Can you describe for me your formal  
16 education.

17          A.       High school.

18          Q.       High school?

19          A.       And I've been to about one semester of  
20 college.

21          Q.       And where did you attend high school?

22          A.       Pine View High School in St. George.

23          Q.       And when did you graduate?

24          A.       2001.

25          Q.       And you say you attended some college?

1 A. I did.

2 Q. And where was that?

3 A. Dixie State College in St. George.

4 Q. And for how long did you attend?

5 A. One semester.

6 Q. And what did you study?

7 A. I was going into engineering, but when  
8 I was there I was just doing my generals.

9 Q. Okay. And you left after one  
10 semester?

11 A. Yes.

12 Q. And what year was that that you were  
13 there?

14 A. 2002, I believe.

15 Q. Okay. At your job at H&S Performance,  
16 what is the physical configuration of your  
17 building? Can you describe it for me?

18 A. We've got about 5,000 square feet of  
19 office space up on the front of the building,  
20 faces the main street. And then around 15 to  
21 20,000 square feet of warehouse.

22 Q. At the main office building, do you  
23 perform any repair work?

24 A. We don't.

25 Q. Do you perform any installations?

1           A.       Only on our test vehicles that we're  
2     developing a product on.

3           Q.       And the warehouse, what is the  
4     physical configuration?

5           A.       Split in half. One side is for  
6     product storage, cardboard, foam, things like  
7     that that we use to box the product up.

8                    The other half is our testing facility  
9     where we've got a dyno room, a hoist to put the  
10    vehicle up in the air, things like that. Typical  
11    tools for a mechanic shop.

12          Q.       Are there any repairs done in that  
13    warehouse?

14          A.       Only on our personal vehicles we're  
15    using for testing.

16          Q.       And any installations in that building  
17    only on your personal vehicles as well?

18          A.       Just on our testing vehicles, yes.

19          Q.       Other than this building and  
20    warehouse, do you have any other locations  
21    associated with H&S Performance?

22          A.       I do not.

23          Q.       When you mention in the warehouse that  
24    you have product storage, is that an actual  
25    product that you sell?

1 A. Yes.

2 Q. And what types of products would those  
3 be?

4 A. Our tuning devices. I mean, are you  
5 talking currently in the warehouse right now?

6 Q. How about at any time.

7 A. At any time. That would be tuning  
8 devices, exhaust systems, mostly just boxing and  
9 cardboard takes up a lot of space. Foam takes up  
10 a lot of space, we have a lot of pallet racks  
11 full of that.

12 Q. So you mentioned that this may change  
13 over time. Are there tuning devices stored in  
14 the warehouse today?

15 A. Not currently.

16 Q. Are there exhaust systems stored in  
17 the warehouse today?

18 A. Just old inventory that we've never  
19 been able to get rid of when we used to sell  
20 exhaust systems.

21 Q. So around what time frame would you  
22 say tuning devices were stored in the building?

23 A. We -- we haven't sold -- well, we  
24 haven't sold -- I'd say about a year ago. There  
25 are minor, I mean, of course there's little

1 leftovers left.

2 Q. So approximately 2014?

3 A. Yeah.

4 Q. Could you identify a month?

5 A. I'm honestly out of that end of the  
6 business. I'm not sure when sales stopped and  
7 when they go, I mean...

8 Q. So when sales stopped in 2014, there  
9 were no longer tuning devices in the warehouses?

10 A. There may be some left, but that's  
11 when the bulk of all, you know, incoming and  
12 outgoing was happening.

13 Q. Do you think there are warehouse --  
14 there are tuning devices in the warehouse today?

15 A. Yeah, I'm sure there are a few in  
16 there.

17 Q. Approximately how many?

18 A. I honestly have no idea.

19 Q. Can you clarify the exhaust systems  
20 that would have been stored in the warehouse?

21 A. Yeah. We used to -- we used to resell  
22 another manufacture's exhaust product, and as  
23 such of course we're going to stock it. So  
24 anywhere from -- you know, in any vehicle  
25 application we provided an exhaust system for we

1 would have had in the warehouse.

2 Q. And what manufacturer would that be  
3 that you resold their product?

4 A. There were FLO-PRO exhaust, and  
5 Diamond Eye Exhaust.

6 Q. What was the second one?

7 A. Diamond Eye Exhaust.

8 Q. Today how many employees do you have  
9 working for H&S?

10 A. I am not 100 percent sure.

11 Q. Approximately?

12 A. I could guess approximately 8 to 10  
13 right now.

14 Q. Okay. Can you name them?

15 A. Yeah, I could go through.

16 Q. Would you, please.

17 A. Lori Anderson -- do you want me to  
18 give any kind of description of what she does?

19 Q. Yeah, that would be great if you can  
20 describe --

21 A. Lori Anderson does our accounting.  
22 Amberly Anderson is kind of her assistant, does  
23 just book work, helps Lori.

24 Payton Hugie, he's more in product  
25 development along with me. Zane Koch, he's a

1 product development. Casey Shirts, myself, and I  
2 believe that's it right now.

3 Q. Is Payton Hugie related to you?

4 A. He is my brother.

5 Q. Okay. Do you have any contractors  
6 that work for H&S?

7 A. Describe "contractors."

8 Q. Any agent of your business that  
9 conducts any business operation.

10 A. As far as?

11 Q. So do you have someone who maybe  
12 drives products over to a distributor or that you  
13 might be utilizing as an independent contractor  
14 or agent, someone H&S Performance is not paying  
15 on their -- on a salary or by the hour?

16 A. I do know in the past we've had some  
17 contracts with people that have sold us software,  
18 as far as someone that may work for Ford Motor  
19 Company or Chrysler that we say, hey, we need  
20 help with this ECM, we need information.

21 I don't know if that's the information  
22 you're looking for but, yeah, we have had people  
23 in the past. Not currently that I know of  
24 anyone.

25 Q. I have questions about both of those



1 areas, so I'll get to that later, but thank you.

2 So you said you have about 8 to 10  
3 employees today. At a previous time you had a  
4 greater number of employees?

5 A. Yes.

6 Q. And what -- at the high, if you know,  
7 what was the --

8 A. 40 to 45 would be the maximum, I  
9 believe.

10 Q. When 40 to 45 people worked for H&S,  
11 were there more job descriptions?

12 A. Oh, yes.

13 Q. Did you have a marketing department?

14 A. Yes.

15 Q. How many people worked in the  
16 marketing department?

17 A. Maximum capacity, four.

18 Q. What other departments did you have,  
19 if any?

20 A. Sales, tech support, processing of  
21 purchase orders. That's probably about the bulk  
22 of all of them.

23 Q. Did you have a testing department that  
24 was separate from product development?

25 A. Not specifically, no.

1 Q. So you would say that testing and  
2 product development were in the same group?

3 A. Exactly.

4 Q. And how many people would you say, at  
5 the height of your business operations, were  
6 working in the testing and product development  
7 department?

8 A. Testing and product development has  
9 always been basically just me and my brother. So  
10 two.

11 Q. And what about Zane?

12 A. Zane -- Zane is more on a hard parts  
13 end.

14 Q. Okay.

15 A. Yeah, I guess you could consider him  
16 as part of that group as well, but we never even  
17 released the -- the products Zane was working on  
18 were never released under H&S Performance because  
19 we not involved in this.

20 Q. Okay. Is Zane also working for  
21 another company other than H&S, if you know?

22 A. He is.

23 Q. What is the name of that company?

24 A. H&S Motorsports.

25 Q. Do you know what type of devices that

1 H&S Motorsports --

2 A. They're manufacturing turbo kits, hard  
3 parts, fuel systems, stuff like that.

4 Q. Okay. So you've described four people  
5 that work in testing and product development:  
6 Your brother Payton, Zane, Casey Shirts, and  
7 yourself. Anyone else that worked in testing and  
8 product development?

9 A. No.

10 Q. I'm going to turn now to general  
11 devices. Can you describe for me what a  
12 "performance tuner" is.

13 A. In my opinion, a performance tuner is  
14 anything that plugs into the vehicle, modifies  
15 fueling or timing or any other characteristics of  
16 the ECM, to increase horsepower, performance,  
17 economy.

18 Q. And is that different than what's  
19 called colloquially as "street tuner"?

20 A. I don't necessarily understand that  
21 question.

22 Q. I've seen in some of the materials  
23 associated with your business a reference to a  
24 street tuner.

25 A. I would consider the street tuner a

1 performance device -- or what was the original  
2 question?

3 Q. Performance tuner.

4 A. I would consider a street tuner a  
5 performance tuner.

6 Q. Okay. So does H&S sell street tuners  
7 today?

8 A. Not currently, no.

9 Q. Did they sell them in the past?

10 A. Yes.

11 Q. Who developed the system for the H&S  
12 street tuner?

13 A. Developed which portion of it?

14 Q. What portions are there?

15 A. You've got multiple portions.

16 Hardware itself, you know, the circuit boards,  
17 things like that were developed by a company that  
18 we purchased them from.

19 Q. Okay. So there's the hardware.  
20 What's another portion?

21 A. You've got the firmware, which is what  
22 runs the hardware. You know, it causes the  
23 screen to boot-up. The user interface, the  
24 questions it asks, things like that, that's the  
25 firmware. And then you've got the tuning files.

1 Q. Did different people work on these  
2 three separate functions?

3 A. Yes.

4 Q. Can you describe who worked on the  
5 hardware?

6 A. Hardware we purchased from another  
7 manufacturer, so we were not in control of that  
8 at all.

9 Q. And what's the name of that  
10 manufacturer?

11 A. The manufacturer is Bully Dog  
12 Technologies, which is now I believe purchased by  
13 SCT Technologies.

14 Q. And the firmware, who developed that?

15 A. Bully Dog Technologies.

16 Q. And the tuning files?

17 A. That would be something that I worked  
18 on.

19 Q. Okay. Did anyone else work with you  
20 on that?

21 A. Yes. The same people that I  
22 mentioned. Payton, Casey and I.

23 Q. And Zane?

24 A. Zane didn't ever have anything to do  
25 with the tuning.

1 Q. Did you use equipment to develop the  
2 tuning?

3 A. Yes.

4 Q. What kind of equipment was that?

5 A. Numerous. Anything from a factory OEM  
6 tool that we would manipulate to watch how they  
7 were flashing the files on. Dynamometers to test  
8 horsepower output. Oscilloscopes, temperature  
9 probes, pressure probes. All kinds of devices to  
10 read input and output of the ECM.

11 Q. Where is that equipment location?

12 A. H&S Performance. In our facility.

13 Q. Is there any other equipment that you  
14 can think of in that list?

15 A. I guess a main one would be a  
16 computer, personal computer that you would write  
17 to the tuning software on.

18 Q. What kind of computer is that?

19 A. Just a desktop computer that's custom  
20 made.

21 Q. What type of operating system does it  
22 use?

23 A. Windows.

24 Q. Did you use trucks to develop this  
25 system?

1 A. Yes.

2 Q. What types of trucks?

3 A. All of the trucks that are on our  
4 vehicle applications. You want me to list them  
5 all?

6 Q. Yes, please.

7 A. 2003 to 2007 6.0 liter Fords. 2008 to  
8 2010 6.4 liter Ford. 2007 to 2014 6.7 liter  
9 Ford. Let's go to the GM. 2007 to 2010 6.6  
10 liter Duramax. 2011 to 2014 6.6 liter Duramax.  
11 2007 to 2009 6.7 liter Cummins. 2006 to 2007 5.9  
12 liter Cummins. And 2010 to 2012 6.7 liter  
13 Cummins.

14 Q. Thank you.

15 A. You're welcome.

16 Q. Let's start with the Ford. You said  
17 2003 through 2007?

18 A. Uh-huh.

19 Q. Does that mean you had one of each of  
20 those trucks? Did you have 2003 Fords, 2004  
21 Fords?

22 A. What we'll usually do is we'll  
23 purchase one in that year range and do the  
24 testing on it and learn from the one and adapt it  
25 to the other years. There are a few of those

1 years in there that we'll have to buy multiples.  
2 Like perhaps if it's got a standard transmission  
3 and we need it tuned specifically for that  
4 transmission, we'll by a few in those year  
5 ranges. So yes, we've had multiple vehicles.

6 Q. For each one of these vehicles that  
7 you've described, you would have at least one  
8 truck?

9 A. I would say that would make sense,  
10 yes.

11 Q. Who owns these trucks?

12 A. Most of those right now are sold.  
13 We'll purchase the vehicle for testing and  
14 development and the vehicle will be sold.

15 Q. So at one point H&S purchased the  
16 vehicle?

17 A. Yes.

18 Q. And who did you purchase it from?

19 A. Depends. Most of them were purchased  
20 brand new from St. George Ford, would be the Ford  
21 ones. Or in Las Vegas. There's numerous dealers  
22 for the Dodge ones. And then the GM ones would  
23 have been -- what's our local dealer there?  
24 Newby Buick.

25 Q. And when you were in Las Vegas, do you



1 know the name of the dealer?

2 A. One of them would have been Toban  
3 Dodge. That's the only one I can remember off  
4 the top of my head.

5 Q. When you say that many of these trucks  
6 have been sold, who have they been sold to?

7 A. A range of people.

8 Q. People associated with H&S  
9 Performance?

10 A. No.

11 Q. Private parties?

12 A. Yeah.

13 Q. Okay. Do you know where these trucks  
14 currently reside?

15 A. I don't.

16 Q. You don't know if they're in the state  
17 of Utah?

18 A. If they are still owned by H&S -- I  
19 believe the 2011 to '14 Duramax is still owned by  
20 H&S, but the other ones other than that, I have  
21 no idea where they've ended up.

22 Q. Do you have records of sale?

23 A. I'm sure.

24 MS. CABALLERO: I'd like to make a  
25 request on the record for those records of sale,

1 please.

2 Q. When you were working on the tuning  
3 system, did you ever contact the Ford engine  
4 manufacturer?

5 A. No.

6 Q. Did you ever contact the General  
7 Motors engine manufacture --

8 A. No.

9 Q. -- to work on the tuner?  
10 Did you ever contact the Dodge --

11 A. No.

12 Q. -- manufacturer?

13 Can you provide the names of the  
14 street tuners that you developed?

15 A. Mini Maxx and the XRT-Pro.

16 Q. Is there one called the Black Maxx?

17 A. Yes, but it was never a street tuner.

18 Q. Okay. How would you describe the  
19 Black Maxx?

20 A. That was prior to our street tuner  
21 release.

22 Q. So what is the function of a Black  
23 Maxx?

24 A. Same basic function, but we coined the  
25 street tuner in I want to say around 2013, and a

1 Black Maxx was no longer available at that point.

2 Q. When did the Black Maxx cease to  
3 become available?

4 A. Best of my knowledge, around 2010.

5 Q. I'll return to that later.

6 Do you know what OEM stands for?

7 A. Original equipment manufacturer.

8 Q. Do you know what ECM stands for?

9 A. Engine control module.

10 Q. Do you know what an on-board  
11 diagnostic system is?

12 A. I do.

13 Q. Can you describe it.

14 A. In my opinion, the on-board diagnostic  
15 system is a system in the ECM itself that  
16 monitors sensors, control data, inputs/outputs of  
17 the ECM and reports problems, if there are any.

18 Q. Is the on-board diagnostic system also  
19 referred to as the OBD for shorthand?

20 A. Not in my opinion, no.

21 Q. You're not familiar with that?

22 A. Yeah, I wouldn't call it that.

23 Q. Do you know what a diagnostic trouble  
24 code is?

25 A. I do.

1 Q. Can you describe it.

2 A. A diagnostic trouble code is a code  
3 the ECM reports when it sees a problem with the  
4 truck.

5 Q. Do you know what a dashboard  
6 malfunction indicator light is?

7 A. I do.

8 Q. Can you describe it.

9 A. A light that comes on on the dash when  
10 there is a diagnostic trouble code present in the  
11 ECM.

12 Q. Do any of the devices that you've  
13 already referenced, the Black Maxx, the Mini  
14 Maxx, or the XRT-Pro affect the OBD or the  
15 on-board diagnostics?

16 A. Of course.

17 Q. In what way?

18 A. Any time you modify the ECM and the  
19 software contained on the ECM you're going to  
20 affect the on-board diagnostic system because the  
21 ECM controls that system.

22 Q. Does it prevent -- do the H&S  
23 devices -- and when I say that, for reference,  
24 I'm referring to the Black Maxx, XRT-Pro, and the  
25 Mini Maxx, so qualify your answer if it doesn't

1 apply to all three -- do they prevent the  
2 on-board diagnostic system from storing  
3 diagnostic trouble codes?

4 A. That's a very difficult question to  
5 answer. Prevent storing, the ECM will still  
6 store diagnostic codes. There are hundreds, if  
7 not thousands of codes in each ECM that are  
8 possible to be triggered by many different  
9 systems on the vehicle.

10 We still allow the on-board diagnostic  
11 system to function, but we may manipulate which  
12 systems it allows it to function with. It's a --  
13 I guess I don't understand the question.

14 Q. Does the use of the H&S device affect  
15 the diagnostic trouble codes that one might see  
16 on the dashboard?

17 A. Versus an OEM totally?

18 Q. Yes.

19 A. Yes, it will.

20 Q. Can you describe that further?

21 A. Describe what.

22 Q. The process by which the coding would  
23 change as opposed to the OEM.

24 A. The product -- any time you increase  
25 horsepower performance, anything like that, you

1 take the risk of exceeding what a sensor on the  
2 vehicle may sense as a -- a good value. Once you  
3 exceed that good value, it could throw a  
4 diagnostic trouble code.

5 So in our tuning and product  
6 development, we must modify thresholds so that  
7 that code may or may not be thrown in order to  
8 get the performance of the vehicle.

9 Q. Okay. Can you identify specific  
10 diagnostic codes that the H&S tuner might alter?

11 A. There would be hundreds.

12 Q. Do you know any by name?

13 A. You want me just to name one code?

14 Q. Sure.

15 A. P0405, P2BAC.

16 Q. Do you know what each one of those  
17 codes stands for?

18 A. I could give you a rough idea.

19 Q. Why don't you go ahead.

20 A. P0405 is an open circuit when you  
21 unplug the EGR system. P2BAC, I believe, has to  
22 do with the UREA system.

23 Q. Does use of the H&S device prevent the  
24 on-board diagnostic system from displaying  
25 dashboard malfunction indicator lights?

1 A. Yes.

2 Q. Do you know what DPF stands for?

3 A. Diesel particulate filter.

4 Q. Do you know the purpose of the diesel  
5 particulate filter?

6 A. I do.

7 Q. Can you describe it for me.

8 A. The diesel particulate filter will  
9 catch soot particles emitted by the engine, and  
10 once it reaches a certain threshold of holding so  
11 many particles, it will burn them off.

12 Q. Do you know what a SCR stands for?

13 A. Supplemental catalytic reduction, I  
14 believe.

15 Q. Might it be selective catalytic  
16 reduction?

17 A. You're correct.

18 Q. Do you know the purpose of the  
19 selective catalytic reduction?

20 A. I do.

21 Q. And what is it?

22 A. To the best of my knowledge, it is a  
23 system that reduces the NOX count on a vehicle by  
24 injecting a special exhaust fluid into the  
25 exhaust system.

1 Q. Do you know what EGR stands for?

2 A. Yes.

3 Q. Can you --

4 A. Engine gas recirculation -- exhaust  
5 gas recirculation, I'm sorry.

6 Q. Do you know the purpose of exhaust gas  
7 recirculation?

8 A. I could -- yeah, I mean, to the best  
9 of my knowledge.

10 Q. Can you explain it, to the best of  
11 your knowledge.

12 A. It takes exhaust gas from the vehicle,  
13 recirculates it back into the intake. I believe  
14 the purpose is to reduce NOX emissions.

15 Q. Can you explain what it means to  
16 remove the EGR or the exhaust gas recirculation?

17 A. It depends on what you been by  
18 "remove."

19 Q. In any way change it from the OEM.

20 A. Some -- some manufacturers are  
21 unplugging them. Removing it entirely is another  
22 thing. You can remove all the hardware from the  
23 vehicle. Unplugging the system itself normally  
24 causes it to not function. If you're removing  
25 the entire system, it's kind of a whole other



1 process.

2 Q. You have sold several devices, the  
3 Black Maxx, Mini Maxx, and the XRT-Pro, among  
4 them. Have you conducted any emissions testing  
5 on the trucks that you purchased --

6 A. We have not.

7 Q. -- once these devices were installed  
8 at any time?

9 A. The only emission testing data we know  
10 of is what you guys have conducted.

11 Q. Okay. Have you ever read an EPA  
12 emission control information label?

13 A. I'm not -- not familiar with what that  
14 is.

15 Q. Have you ever seen one on the truck  
16 engine?

17 A. I have not.

18 Q. I'm going to introduce Exhibit 2. And  
19 just so you know, this copy's going to go back to  
20 the court reporter at the end of the day, that's  
21 why it's marked.

22 Do you know what this exhibit is?

23 A. Not at first glance, no.

24 Q. Why don't you take a minute and go  
25 through it.

1           A.       I believe this is the initial request  
2 for information that the EPA sent H&S  
3 Performance.

4           Q.       Yes, it is.

5                   Did H&S Performance respond to this  
6 208 --

7           A.       Yes.

8           Q.       -- request?

9                   This is Exhibit 3. Is Exhibit 3 H&S's  
10 response to the Exhibit 2?

11          A.       It looks to be, but I can't be  
12 100 percent sure as I did not formulate this  
13 response.

14          Q.       Who formulated this response?

15          A.       Casey Shirts, my partner.

16          Q.       Did you review this response?

17          A.       Honestly, I do not know. I likely saw  
18 it, but it does not look familiar.

19          Q.       Okay. I'm going to introduce as  
20 Exhibit 4 a portion of that response. Actually,  
21 Exhibit 5 and 4. This is Exhibit 4. This is  
22 Exhibit 5 (indicating).

23                   If you would take a few moments and  
24 look through that. And I know it's a lengthy  
25 exhibit, so please take your time.

1                   Have you finished reviewing the  
2 exhibits?

3           A.       I have.

4                   MR. CLARKSON: Do you have a copy of  
5 Exhibit 5?

6           Q.       BY MS. CABALLERO: Did you assist in  
7 compiling the information in either Exhibit 4,  
8 which is identified with the header of "Item  
9 Listing August 21, 2011," or Exhibit 5, which is  
10 a "Sales by Item Detail January 1st, 2010,  
11 through January July 20th, 2011"?

12          A.       I did not assist in those.

13          Q.       Okay. Based on the information  
14 provided to EPA in this response, Exhibit 4 is a  
15 list of items sold through July 20th, 2011, and  
16 Exhibit 5 is also the sales through July 20th,  
17 2011. So we're going to look at each one of  
18 these, so let's start with Exhibit 4.

19                   It's my understanding, based on this  
20 two-page document, that it is a list of all of  
21 the products sold by H&S Performance at this time  
22 as well as the application of the products.

23          A.       I would agree with that.

24          Q.       And if you turn to Page 2, on the top  
25 row, the Black Maxx Race Tuner. The function is

1 to re-program a vehicle's ECM for added power.

2 And then the application is the trucks that's to  
3 be used on, and I think, unfortunately, because  
4 of this spreadsheet that some of the application  
5 is cut off. Would you agree?

6 A. Yes.

7 Q. So there's more trucks that this  
8 device can be used on than listed in the first  
9 row as you see in this printout. And is that the  
10 same for the Mini Maxx, the purpose is to  
11 re-program the vehicle's ECM for use on these  
12 trucks?

13 A. Correct.

14 Q. Same with the XRT-Pro?

15 A. Correct.

16 Q. Okay. You mentioned earlier, I  
17 believe, you thought you had stopped selling the  
18 XRT-Pro maybe by 2010?

19 A. The Black Maxx we stopped selling at  
20 some point, I wasn't sure on the date.

21 Q. Okay. It looks like you're still  
22 selling the Black Maxx through 2011?

23 A. Right.

24 Q. And I mentioned the Black Maxx, the  
25 Mini Maxx, and the XRT-Pro. I just wanted to

1 confirm with you these are the functions of these  
2 devices and the applications that they are used  
3 for?

4 A. Yes.

5 Q. And these are all three used for  
6 Dodge, General Motors, and Ford trucks?

7 A. Correct.

8 Q. Turning to Exhibit 5. As represented  
9 by H&S in their 2011 208 response, these are the  
10 sales of their products through July 20th, 2011.  
11 Can you turn to the first green tab, which is  
12 approximately Page 66 of the exhibit.

13 And I'd like to understand the  
14 information presented on Page 66 of Exhibit 5.  
15 It appears to be the invoice, for example, for  
16 the Black Maxx Race Tuner, and it would have been  
17 sold to Pypes Performance Exhaust. Is that a  
18 correct way to read this information?

19 A. As far as I know, yes. I didn't  
20 formulate this response so I have no -- I'm not  
21 familiar with this spreadsheet.

22 Q. Okay. But it's been represented to  
23 EPA that these Black Maxx Race Tuners, as  
24 indicated beginning on Page 66, were sold to  
25 these customers on these dates and in this

1 quantity.

2 A. Yes, it does look like that's what the  
3 spreadsheet represents.

4 Q. Moving on to Page 70 where the green  
5 tab is. It appears to be the same type of  
6 information for the Mini Maxx Race Tuner; who it  
7 was sold to, how many were sold, and when it was  
8 sold; is that correct?

9 A. That is correct.

10 Q. And that continues on for several  
11 pages. And then go to the third green tab, which  
12 is approximately Page 82 of Exhibit 5. There was  
13 a list of customers of the XRT-Pro, and the dates  
14 and the quantity in which they were sold to those  
15 customers. The XRT-Pro was sold on November 30th  
16 of 2010 to Premier Performance Products?

17 A. Yes.

18 Q. Is this an accurate and complete  
19 representation of H&S Performance's sales through  
20 this time?

21 A. I could not comment on that as I did  
22 not make this report.

23 Q. I'd like to introduce Exhibit 6. Do  
24 you recognize this exhibit?

25 A. I do.

1 MS. CABALLERO: You know what,  
2 Mr. Clarkson, I think that was the one I --

3 MR. CLARKSON: Sorry, I wrote on it.

4 MS. CABALLERO: Sorry.

5 Q. Okay. Can you describe for me what  
6 this exhibit is.

7 A. This looks like an old installation  
8 manual for a Mini Maxx tuner.

9 Q. When you say "old," approximately what  
10 year?

11 A. Prior to the street tuner, so I would  
12 say this was used in 2009 through 2012-ish.

13 Q. Okay. And what is the purpose of this  
14 installation manual?

15 A. To assist the customer in use of the  
16 product.

17 Q. Would one of these manuals accompany  
18 the device that the customer had purchased?

19 A. Yes.

20 Q. And was there a similar manual for the  
21 Black Maxx?

22 A. There was.

23 Q. And for the XRT-Pro?

24 A. There was.

25 Q. I'd like to turn to the green tab in

1 Exhibit 6, which is Page 37 of the Mini Maxx  
2 Installation Manual. If you could familiarize  
3 yourself with that page for a minute.

4 A. Yep.

5 Q. So this describes the installation of  
6 the Mini Maxx in a 2010 to 2011 6.7L Dodge  
7 Cummins; is that correct?

8 A. Correct.

9 Q. And it describes the power levels of  
10 the pickup truck if the device -- if the DPF is  
11 present?

12 A. Correct.

13 Q. And if the DPF is removed?

14 A. Correct.

15 Q. So can the DPF be left in place  
16 completely?

17 A. On all of our products, yes.

18 Q. And the DPF can also be removed  
19 completely?

20 A. On certain products, yes.

21 Q. Now, here, if you go under "DPF  
22 Selection" it says:

23 "H&S offers tuning that allows the  
24 DPF to be left in place, or  
25 removed" correctly.



1 Is that --

2 A. Completely.

3 Q. Completely. Is that correct?

4 A. Correct.

5 Q. Moving on to the next page, Page 38 of  
6 the Mini Maxx manual. Can you explain the  
7 removal of the NOX sensor for the 2011 cab and  
8 chassis version. Go down about one, two, three,  
9 four, five, six, seven, eight lines.

10 "On the 2011 Cab & Chassis, there  
11 is usually an additional NOX  
12 sensor as well as a UREA system  
13 that needs to be unplugged when  
14 running DPF REMOVED tuning."

15 A. You would like me to describe how you  
16 remove those?

17 Q. Yes. Can you describe --

18 A. I'm unfamiliar with how to remove the  
19 NOX sensor.

20 MR. CLARKSON: Wait until she finishes  
21 her question.

22 Q. BY MS. CABALLERO: Can you describe,  
23 to the best of your ability, the removal of the  
24 NOX sensor for this particular senator.

25 A. I'm unfamiliar. The description here

1 is not describing the NOX sensor itself. The  
2 description you see following there is for the  
3 UREA system.

4 Q. Why would one want to remove the UREA  
5 system?

6 A. These products are sold in multiple  
7 areas of the world that the UREA system will not  
8 function. So we offer our customer an  
9 opportunity to remove this system so they can use  
10 that in their area of the world.

11 Q. Are these products used in the United  
12 States?

13 A. I'm unfamiliar with -- I don't know  
14 where the products go. I don't do our sales.

15 Q. I draw your attention to Exhibit 5.  
16 Which is the information you provided the EPA in  
17 the 2011 208(a) response. There are a number of  
18 sales here to companies such as Premier  
19 Performance Products. Do you know where Premier  
20 Performance Products are located?

21 A. I know know where Premier is located.

22 Q. Where are they located?

23 A. They're in Idaho.

24 Q. What about Rollin Smoke Diesel?

25 A. I'm not sure where they're located.

1 Q. What about Pypes Performance Exhaust,  
2 do you know where they're located?

3 A. I have no clue where Pypes is located.

4 Q. Do you know where Extreme Diesel  
5 Performance is located?

6 A. I believe Extreme Diesel has numerous  
7 warehouses, one of which is in Las Vegas, Nevada.

8 Q. Do you know where Diesel Performance  
9 Parts are located?

10 A. I don't.

11 Q. Do you know where Frank Supply Company  
12 is located?

13 A. I don't.

14 Q. Do you know where Power Labs Diesel is  
15 located?

16 A. I don't.

17 Q. Do you know where Gomer's, Inc. in  
18 Missoula is located?

19 A. Based off the name, I could tell you  
20 Montana.

21 Q. So are some of these products sold to  
22 customers in the United States?

23 A. Based off of this report, yes. But I  
24 did not make this report.

25 Q. Turning to Page 39 of the Mini Maxx

1 Installation Manual, Exhibit 6. Drawing your  
2 attention to the "EGR Unplug/Delete" section at  
3 the top of the page.

4 A. Uh-huh.

5 Q. Can the entire EGR system be removed  
6 with an H&S EGR delete kit?

7 A. Yes.

8 Q. How does that work? How do you do  
9 that?

10 A. The H&S EGR delete kit provides  
11 products that allow you to remove -- as we talked  
12 earlier -- you can unplug the EGR system or  
13 remove it completely. An H&S EGR delete kit  
14 would allow you to remove it completely.

15 Q. Can you use an EGR delete kit without  
16 one of your tuner devices?

17 A. It will throw check engine lights and  
18 cause problems with the vehicles unless you have  
19 another company's device to tune the vehicle.

20 Q. Thank you. I'm finished with  
21 Exhibit 6.

22 I'm going to move on to a different  
23 topic.

24 Is there any type of protection for  
25 your device software?

1 A. Describe "protection."

2 Q. Anything to prevent it from being  
3 hacked.

4 A. Yes. There are encryption protocols  
5 in place.

6 Q. Is there any protection to prevent it  
7 from being counterfeited?

8 A. Yes. The same encryption.

9 Q. Okay. Is the software in the Mini  
10 Maxx, Black Maxx, and XRT-Pro different?

11 A. Describe "software."

12 Q. The tunes.

13 A. Minimally, yes, they are different.

14 Q. Can you describe the differences?

15 A. The XRT-Pro device is what we call not  
16 shift-on-the-fly, which means you cannot  
17 instantly change a power level. So there are  
18 differences in the tuning files on that device.

19 Q. Are you providing technical support  
20 for any of your products today?

21 A. Not currently, no.

22 Q. Did you provide technical support in  
23 the past?

24 A. We did.

25 Q. Did you have something called the H&S

1 tech line?

2 A. Yes.

3 Q. Was that able to be accessed at  
4 1.888.628.1730?

5 A. Yes.

6 Q. Who staffed that line?

7 A. Describe "staffed."

8 Q. Who answered the phone?

9 A. Do you want me to name all the  
10 employees?

11 Q. Yes.

12 A. Brendon Anderson, Kyle Little, Kellen  
13 Gardner, Jim Maxfield, Tim Moore. To the best of  
14 my knowledge that's all I can remember.

15 Q. Okay. How often was that line open?

16 A. 9:00 to 5:00 every day.

17 Q. Weekends?

18 A. I believe there was a point we did  
19 offer some emergency assistant online through  
20 e-mail, but I don't believe the phone lines were  
21 ever open on weekends.

22 Q. Do you know what e-mail address was  
23 used for that?

24 A. I don't for sure. I can guess that it  
25 would have been tech@h&sperformance.com.

1 Q. We don't want you to guess, but thank  
2 you.

3 Do you have a personal e-mail  
4 address --

5 A. I do.

6 Q. -- with the company?

7 A. Yep.

8 Q. What is that?

9 A. Bently@h&sperformance.com.

10 Q. Do you have software updates for your  
11 Mini Maxx, Black Maxx, and XRT-Pro devices?

12 A. We do.

13 Q. How often?

14 A. Depends on the device itself and the  
15 application it's being used on.

16 Q. Can you give me an example.

17 A. One device being used on a certain  
18 application may have an update once a week, while  
19 another one may not be updated for years.

20 Q. How did you contact, if you did,  
21 customers with software updates?

22 A. We never contact our customer for a  
23 software update.

24 Q. How do they contact you?

25 A. Through our tech line.

1 Q. Do you know how many calls you  
2 received on the tech line a day?

3 A. I do not.

4 Q. Approximately?

5 A. I can give you an approximate, if  
6 that's what you're wanting.

7 Q. An approximate would be fine.

8 A. 500.

9 Q. 500 calls a day?

10 A. Uh-huh.

11 Q. And you would consider that to be an  
12 average day?

13 A. Yes, in our peak period.

14 Q. When did you stop using the H&S tech  
15 line?

16 A. About six months ago.

17 Q. Why did you stop using the H&S tech  
18 line?

19 A. We haven't sold a product for over a  
20 year, our product warranty was a one-year  
21 warranty, so we didn't see the need to continue  
22 supporting the product. And not only that, we  
23 were getting multiple calls from devices that we  
24 had not manufactured.

25 Q. For example?



1           A.       Counterfeit devices that someone would  
2     have purchased. We were tech supporting  
3     something we had made no money on, so it wasn't  
4     feasible for us to continue that tech support.

5           Q.       To your knowledge, was the -- did the  
6     counterfeit device say "Mini Maxx"? "Black  
7     Maxx"?

8           A.       It sure did.

9           Q.       "XRT-Pro"?  
10                    Have you seen these devices yourself?

11          A.       We purchased it.

12          Q.       Where did you purchase them from?

13          A.       I honestly can't remember. Would have  
14     been just online. Went on online and found one,  
15     yes.

16          Q.       Would you have a record of that  
17     purchase?

18          A.       I believe the one we purchased was  
19     through one of our dealers, because we were  
20     scared of us purchasing direct from a  
21     counterfeiter that it wouldn't ship it to us.  
22     But I can probably find who we got it from.

23                   MS. CABALLERO: Okay. I'd like to  
24     request on the record for the information about  
25     the purchase of the counterfeit device.

1 Q. When did you purchase this device?

2 A. It would have been a year and a half  
3 ago, about.

4 Q. Do you know where the device was  
5 shipped from?

6 A. I don't.

7 Q. Did you test the device?

8 A. I did.

9 Q. Were there differences between the  
10 device and your own device?

11 A. Software differences, no. Hardware,  
12 yes. You could see where the plastic on the  
13 device had actually been rubbed clean of previous  
14 manufacture markings.

15 Q. Do you know where the device shipped  
16 from?

17 A. If I could remember who we bought it  
18 from I could tell you. I'm not sure which dealer  
19 we ended up buying that from.

20 Q. Is it a country of origin other than  
21 the United States?

22 A. No.

23 Q. Was there any indication from the  
24 hardware of the device who the original  
25 manufacturer was?

1           A.       No. I mean, as far as a difference  
2 from our hardware? It was the identical hardware  
3 as ours.

4           Q.       Identical hardware?

5           A.       Identical.

6           Q.       Did that lead you to believe that it  
7 was the same supplier as you had had for your  
8 hardware?

9           A.       Correct.

10          Q.       And your supplier was Bully Dog?

11          A.       Correct.

12          Q.       So would it be your understanding that  
13 someone took Bully Dog's hardware and put it in a  
14 device that looked identical to your device?

15          A.       That is one method they could have  
16 used, yes.

17          Q.       Can you think of another method?

18          A.       You can copy the device entirely.

19          Q.       How?

20          A.       There are numerous companies out  
21 there. You can send any electronic device, an  
22 iPhone, a radio, they will copy it in China, for  
23 example. You can send it over there and they  
24 will copy it.

25          Q.       When you mentioned earlier you thought

1 this device has been produced in the United  
2 States, do you also believe that other devices  
3 have been produced in China?

4 A. "Produced" in my description earlier  
5 meant that the manufacturer was located in the  
6 United States. Many of these devices are not  
7 made in the United States, they're made in China,  
8 mainly.

9 Q. Did you make all of your devices in  
10 Utah?

11 A. We've never made devices.

12 Q. Where was the XRT-Pro assembled?

13 A. Describe "assembly."

14 Q. For the H&S street tuners, you have  
15 described them as having hardware, firmware, and  
16 tuning files. And we have looked at Exhibit 6  
17 which has a picture of the Mini Maxx on the  
18 front. So let's turn to the Mini Maxx instead of  
19 the XRT-Pro.

20 A. Okay.

21 Q. This outer casing of the Mini Maxx,  
22 where is that purchased from?

23 A. By H&S?

24 Q. Yes.

25 A. H&S purchases that from Bully Dog

1 Technologies.

2 Q. The outer black plastic piece?

3 A. Correct.

4 Q. And the inside portion of this device,  
5 the computer portion, who links those two pieces  
6 together?

7 A. Bully Dog Technologies.

8 Q. And then Bully Dog ships that to you?

9 A. We get it exactly as you see in that  
10 picture there.

11 Q. And then that's stored in your  
12 warehouse?

13 A. Correct.

14 Q. Which Bully Dog location is this that  
15 sends it to you?

16 A. I believe they only have one, and it's  
17 in Idaho.

18 Q. Is there any other information about  
19 counterfeiting that you'd like to share with me  
20 today?

21 A. We've been combating counterfeiting  
22 for probably close to two years. The problems  
23 lies in the fact that the product value went up  
24 so highly that there became a huge opportunity  
25 for anyone else to counterfeit it.

1                    Obviously you can make one of these at  
2 the hardware, you know, the grassroots level,  
3 this can be made for less than \$100. And when  
4 that device is selling for \$2,000 online because  
5 they're so hard to come by, it creates a huge  
6 margin of profit for someone to look at and say I  
7 would love to make one of those myself.

8                    And we have contacted the manufacturer  
9 that we purchased them from and notified them  
10 that there are counterfeits being made, can you  
11 do something about it? We've had e-mail  
12 responses, and we have an interaction with them  
13 we could show you if you would like to see it.

14                   MS. CABALLERO: I'd like to make a  
15 request for those documents, please.

16            Q.            So this is correspondence with Bully  
17 Dog?

18            A.            Correct.

19            Q.            When did you initially begin  
20 communicating with them about this issue?

21            A.            I could guess about a year ago.

22            Q.            And you said about two years ago  
23 you --

24            A.            Found out about it.

25            Q.            -- noticed the counterfeiting. Was

1 that approximately 2013?

2 A. Yes.

3 Q. Do you know when in 2013?

4 A. I don't. The counterfeiting didn't  
5 become a problem until the product became less  
6 and less available.

7 So when we first found out about the  
8 counterfeiting, we kind of pushed it off as  
9 something that wasn't a big deal to us. But as  
10 soon as the product value went up, we saw more  
11 and more counterfeits being produced, which is  
12 where we killed our tech line.

13 Q. So when do you think, based on your  
14 knowledge, that the counterfeiting was at a level  
15 that you began to contact -- began to correspond  
16 with Bully Dog?

17 A. About a year ago.

18 Q. Okay. So if one goes on the Internet  
19 to Amazon.com, one can purchase H&S Performance  
20 tuners?

21 A. Correct.

22 Q. Are those your devices?

23 A. Not that I know of, no.

24 Q. Are you sharing your -- do you have  
25 intellectual property?

1 A. Describe "intellectual property."

2 Q. Your tuning software.

3 A. Okay.

4 Q. Do you share your tuning software with  
5 anyone, other than a customer?

6 A. Tuning software, I actually don't own.  
7 Are you talking like the device software itself  
8 that runs it?

9 Q. Yes.

10 A. We've never had that in our property.  
11 That's all controlled by Bully Dog Technologies.  
12 I couldn't share that if I wanted to.

13 Q. So you've described earlier that you  
14 worked with Zane, Payton, and Casey to develop  
15 products?

16 A. Correct.

17 Q. Did you then provide that information  
18 to Bully Dog?

19 A. Correct.

20 Q. And Bully Dog assembled a device and  
21 shipped it back to you?

22 A. They don't need to ship the device per  
23 se, but they will put the technologies on the  
24 device, yes.

25 Q. But you have a warehouse where there



1 were products stored?

2 A. Correct.

3 Q. So how did those products get in the  
4 warehouse?

5 A. Describe the question.

6 Q. Let's go to the beginning of this.

7 You worked with three other people to  
8 develop a product, and you gave that information  
9 to Bully Dog, correct?

10 A. Uh-huh.

11 Q. And Bully Dog, in Idaho, has assembled  
12 some sort of product like the Mini Maxx?

13 A. Correct.

14 Q. Does this product ever make its way  
15 back to your warehouse?

16 A. It does.

17 Q. How does it do that? Via UPS?

18 A. Yes, or truck freight, depends how  
19 the --

20 Q. So there is a product assembled by  
21 Bully Dog that is given to you or sold to you?

22 A. Sold to us.

23 Q. At what price per device?

24 A. I'm honestly not sure.

25 Q. What is Bully Dog charging you for?

1 A. The device.

2 Q. The device itself?

3 A. Yes.

4 Q. And then you are selling that device  
5 at an increased price over the Bully Dog charge?

6 A. Correct.

7 Q. How are these tunes uploaded into, for  
8 example, this Mini Maxx device that we looked at  
9 in Exhibit 6?

10 A. "Tunes" meaning?

11 Q. Software that you've developed with  
12 the other three people on your team.

13 A. There's an SD card inside of the unit.

14 Q. Other than your work with Bully Dog  
15 and the people that work with H&S, do you consult  
16 with anyone else on tuning?

17 A. Yes.

18 Q. And who is that?

19 A. Numerous people in the industry.

20 Q. So who are they?

21 A. Describe "consult."

22 Q. Provide information that you have  
23 developed in regard to devices such as the Mini  
24 Maxx here in Exhibit 6 for other -- to others?

25 A. I don't provide any -- any of this

1 device information. My interpretation of  
2 "consult" is another tuning company in our  
3 industry may ask how are you guys doing this, or  
4 what are your, you know, what is your ideas on  
5 how this works on the -- do you guys have this  
6 vehicle? And how is the testing going on it?

7 That, to me, would be a consulting  
8 with the other people in the industry.

9 Q. Given what you've just described,  
10 could you please tell me who those other people  
11 are that you have those conversations with, to  
12 the best of your knowledge remembering today.

13 A. There were hundreds. I mean, every --  
14 well, maybe not hundreds -- but tens of tens.

15 Q. Name a few, to the best of your  
16 knowledge.

17 A. Fleece Performance, Hardway  
18 Performance. Essentially anyone that is in our  
19 same industry I have had conversations with. And  
20 we are very -- we're a tight-knit industry where  
21 they can ask me questions, you know, I'm going to  
22 respond with an answer.

23 MS. CABALLERO: Can I make a  
24 request -- I'd like to make a request on the  
25 record for, to the best of Mr. Hugie's knowledge,

1 those he has consulted with in the industry on  
2 device tuning.

3 MR. CLARKSON: I think he's answered  
4 that question to the best of his knowledge as you  
5 sit here right now, he's answered that.

6 Q. BY MS. CABALLERO: You don't keep any  
7 phone records?

8 A. I don't.

9 Q. You don't keep any paper records?

10 A. I'm sure I have e-mail records, but  
11 perhaps I'm not understanding your definition of  
12 "consult."

13 Q. You are aware that under Clean Air Act  
14 307(a) you -- sale of these devices could violate  
15 the Clean Air Act?

16 A. Correct.

17 Q. So I think it is no surprise to you  
18 here today because -- I can introduce the Notice  
19 of Violation, I don't think it's necessary --  
20 we're interested in finding out more about this  
21 industry and fulfilling our enforcement function  
22 as an agency of the United States Environmental  
23 Protection Agency.

24 To that end, we're interested in those  
25 that you've spoken with, because they may be

1 selling such devices. So if you've provided  
2 information to these other people, we're very  
3 interested in who those people are.

4 A. I would love to provide information on  
5 who those other people are. I know numerous  
6 people in the industry.

7 MS. CABALLERO: To those that you've  
8 actually spoken with, to the extent that there is  
9 an e-mail or verbal record of those  
10 communications, any type of record of those  
11 communications, we're going to make a request for  
12 that on the record. Thank you.

13 Q. Do you have any consulting contracts  
14 with others where they're actually paying you --

15 A. I do not.

16 Q. -- for what you know?

17 You described earlier in your  
18 warehouse that you had some products from  
19 FLO-PRO. What is the connection, either today or  
20 in the past, of H&S with FLO-PRO?

21 A. FLO-PRO made exhaust systems, which  
22 are the pipes that go underneath the truck. H&S  
23 has sold H&S products to FLO-PRO, as well as  
24 FLO-PRO has sold their products to us.

25 Q. Do you know where FLO-PRO is located?

1 A. Alberta, Canada.

2 Q. Okay. Have you shipped anything to  
3 FLO-PRO in Canada?

4 A. Oh, yes.

5 Q. What have you shipped?

6 A. Any of the products listed on our  
7 sales. All of them, I'm sure, at one point or  
8 another.

9 Q. Okay. You've described already your  
10 connection with Bully Dog. Do you have any  
11 connection with Torque Technologies?

12 A. I do not.

13 Q. SCT?

14 A. I do not.

15 Q. EFI Live?

16 A. Do not.

17 Q. Spartan?

18 A. No.

19 Q. Smarty/Race Me?

20 A. No.

21 Q. To your knowledge, have you shipped to  
22 any Canadian customers other than what you've  
23 described as with FLO-PRO?

24 A. Yes.

25 Q. Have you shipped to any legal entities

1 in Canada, other than individuals?

2 A. Describe a "legal entity."

3 Q. A company.

4 A. Oh, yes.

5 Q. Do you know the names of those  
6 entities?

7 A. Dick's Performance.

8 Q. Can you think of any other legal  
9 entities you've shipped to in Canada?

10 A. North American Diesel Performance.

11 Q. Anyone else?

12 A. Laboratuar Diesel. I do not know how  
13 to spell it.

14 Q. Anyone else that you can think of?

15 A. Not off the top of my head. But we do  
16 have a dealer listing that I could go through,  
17 and there are probably hundreds of dealers in  
18 Canada we've shipped to.

19 MS. CABALLERO: I'd like to make a  
20 request on the record for the names of those  
21 dealers.

22 MR. CLARKSON: Specifically in Canada?

23 MS. CABALLERO: Yes. Thank you.

24 Q. Regarding the FLO-PRO equipment that  
25 was in your warehouse, the pipes, do they contain

1 DPF?

2 A. The pipes that FLO-PRO sells could be  
3 a variety of pipes. Anything from what they call  
4 a DPF back system, to a turbo back system. So I  
5 guess I don't understand the question.

6 Q. Are they empty pipes?

7 A. Describe "empty."

8 Q. Or do they actually have pollution  
9 control technology in them?

10 A. No, they are just a hollow pipe.

11 Q. Thank you.

12 Those are the pipes you stored in your  
13 warehouse?

14 A. Correct.

15 Q. There's a phrase we've heard in the  
16 industry, "custom tunes." Do you have custom  
17 tunes?

18 A. We offer a method for customers to  
19 build custom tunes.

20 Q. Can you describe what a custom tune  
21 is.

22 A. A custom tune is something that we  
23 don't provide to the customer per se. A customer  
24 makes a vehicle modification that is outside of  
25 what we provide support for. This allows them to



1 adjust specifically for their modifications on  
2 their vehicle.

3 Q. How do customers contact you for  
4 custom tunes?

5 A. Like I mentioned before, we don't  
6 provide the custom tunes. We provided a method  
7 for them to build their custom tunes.

8 Q. How do you provide that method?

9 A. That method is downloadable on our  
10 website.

11 Q. Is that downloadable on your website  
12 still today?

13 A. I do not know.

14 Q. Who would know?

15 A. I could look on the website and tell  
16 you, but we've had so many website changes over  
17 the last six months that I'm not sure what's on  
18 there or not on there.

19 MS. CABALLERO: I'd like to make a  
20 request to -- for Mr. Hugie to identify whether  
21 custom tunes can be downloaded from the H&S  
22 website today.

23 Q. Do your employees sign confidentiality  
24 agreements?

25 A. No.

1 Q. None? No employees --

2 A. No.

3 Q. -- at any time?

4 Are you in control of any eBay sales?

5 A. No.

6 Q. Do you distribute to Performance

7 Diesel Industries?

8 A. I'm not familiar with who that is.

9 Q. I believe it is a company located in  
10 St. George --

11 A. Oh, PDI.

12 Q. Yes.

13 A. I know them by PDI.

14 Q. PDI. Okay. So you do know what

15 Performance Diesel Industries is?

16 A. I do.

17 Q. And they're located in St. George,

18 Utah, correct?

19 A. They are.

20 Q. Do you distribute products to them?

21 A. Not currently, no.

22 Q. Have you in the past?

23 A. I believe so, yes.

24 Q. What types of products have you  
25 distributed to them?

1           A.       When H&S Performance originally  
2 started we sold them some exhaust pipes as well  
3 as some simulators.

4           Q.       Did you sell them Mini Maxx?

5           A.       I'm not sure.

6           Q.       XRT-Pro?

7           A.       Couldn't tell you.

8           Q.       Black Maxx?

9           A.       Do not know.

10          Q.       When did you first begin selling  
11 products to PDI?

12          A.       I would guess 2008.

13          Q.       At what point did you stop  
14 distributing products to them?

15          A.       I don't know that we ever have. I'm  
16 outside of the sales. The only reason I know of  
17 2008 is because we were such a small company that  
18 I saw the devices going to PDI.

19          Q.       Today you say you have very few  
20 employees left and are no longer selling devices?

21          A.       Correct.

22          Q.       So is it your understanding that no  
23 devices are being provided to PDI today?

24          A.       Correct.

25          Q.       Can you describe your simulators that

1 were sold to PDI.

2 A. They were a resistor, housed in a plug  
3 that you would plug in to a sensor location that  
4 would fool that sensor signal. That was the  
5 original product that H&S ever developed.

6 Q. Did PDI purchase that from you?

7 A. Yes.

8 Q. What was the purpose of the simulator?

9 A. To fool a sensor on an emission  
10 control system.

11 Q. On what types of products, if you  
12 know, were the simulators used? In what types of  
13 trucks?

14 A. The only truck we ever built those for  
15 was 2007, 2009 6.73 liter Cummins.

16 MS. CABALLERO: Okay. I think I'd  
17 like to take a break.

18 MR. CLARKSON: Okay.

19 (There was a break taken.)

20 (Exhibits 7 and 8 were marked for  
21 identification.)

22 MS. CABALLERO: Back on the record.

23 Q. I would like to clarify two aspects of  
24 your testimony. Earlier we had discussed what an  
25 ECM was, and you had said it was an engine

1 control module.

2 A. Uh-huh.

3 Q. Are you also familiar with an  
4 electronic control module?

5 A. Of course, yes.

6 Q. And would you be comfortable with  
7 using ECM today to describe either engine control  
8 module or an electronic control module?

9 A. Yes.

10 Q. So we can use those two  
11 interchangeably.

12 I'd also like to clarify, we discussed  
13 the work done with Bully Dog, and I'd like to  
14 make sure I understand. When they ship, for  
15 example, a Mini Maxx device back to you, is the  
16 device workable and able to be sold as is? Or is  
17 there something else that you have to put into  
18 the device?

19 A. When that device comes to us, there's  
20 an SD card which finalizes all the program and  
21 procedures.

22 Q. Okay. Thank you.

23 Does H&S communicate through the use  
24 of online activities?

25 A. Describe "online activities."

1 Q. YouTube.

2 A. Yes, we've had YouTube videos.

3 Q. What is the purpose of the YouTube  
4 online presence?

5 A. General marketing. Product  
6 information.

7 Q. I'm going to introduce Exhibit 7,  
8 which is EPA's February 23rd, 2015, information  
9 request under Clean Air Act 208(a) to H&S  
10 Performance for the purpose of obtaining a number  
11 of videos that were posted to the Internet.

12 H&S responded to this on March 3rd,  
13 and then introducing Exhibit 8. Exhibit 8 is  
14 H&S's response to the February 23rd, 2015, 208(a)  
15 request.

16 And in this response H&S provided both  
17 a list of videos and a USB memory device with the  
18 videos; is that correct?

19 A. Correct.

20 Q. We're going to turn to that video in a  
21 moment, but first can you describe for me what is  
22 the H&S Performance channel on YouTube?

23 A. To the best of my knowledge, YouTube  
24 creates a channel for every -- every YouTube  
25 user.

1 Q. And you are a YouTube user --

2 A. Correct.

3 Q. -- as H&S?

4 Is this an account associated with the  
5 performance channel?

6 A. Yes. Every YouTube has an account.

7 Q. Who created the account?

8 A. I do not know.

9 Q. Does someone at H&S create the  
10 account?

11 A. I'm sure.

12 Q. An H&S employee?

13 A. Likely, yes.

14 Q. What would that person's job  
15 responsibilities have been, if you know?

16 A. Marketing.

17 Q. So do you believe that someone in the  
18 marketing department created the YouTube account  
19 to post YouTube videos --

20 A. Yes.

21 Q. -- about H&S Performance?

22 A. Yes.

23 Q. But you don't know who that person  
24 was?

25 A. Correct.

1 Q. Do you know what e-mail address is  
2 associated with the YouTube account?

3 A. Only because I had to try and get  
4 these videos. I was part of obtaining these  
5 videos and I believe it was H&S media at Gmail --  
6 or -- oh. I'm going to have to say I don't  
7 remember.

8 Q. Okay. I'd like to make a request for  
9 the name of that --

10 A. I can get that info.

11 Q. -- e-mail address.

12 Do you know who has access to that  
13 e-mail account?

14 A. I do not.

15 Q. How did you access it?

16 A. I didn't ever accessed that account.  
17 I just knew -- I had to find out who -- I had to  
18 find out what e-mail it was listed under so I  
19 could reset the password to actually get -- the  
20 way YouTube works is any user can access any  
21 account, you just have to be given permission to  
22 that account.

23 Q. So did you receive permission?

24 A. I did.

25 Q. How did you do that?



1           A.       Through one of our previous marketing  
2 guys.

3           Q.       So the account is password protected?

4           A.       It is.

5           Q.       And generally would someone in  
6 marketing have the password?

7           A.       Yes.

8           Q.       But you obtained the password for  
9 purposes of 208(a)?

10          A.       I didn't obtain a password. I was --  
11 I was set as a manager for the account, so then I  
12 could view all the videos.

13          Q.       As the manager for the account you can  
14 change the password?

15          A.       I believe so. I'm not sure. What  
16 happens is I log in as my personal YouTube --  
17 everyone can create a YouTube account -- so when  
18 I log in as Bentley, it shows, hey, I'm Bentley,  
19 or do I want to see H&S stuff. I just get to  
20 view both.

21          Q.       So besides you, people in marketing  
22 could access the H&S Performance channel on  
23 YouTube?

24          A.       Correct.

25          Q.       Other than those people in marketing

1 and yourself, do you have any information that  
2 others would have accessed this account?

3 A. No.

4 Q. Do you have any belief that this  
5 account was hacked by anyone?

6 A. No.

7 Q. I have a list of videos from the  
8 208(a) responses that were posted to YouTube, and  
9 we're going to turn to those videos now. So this  
10 will be Exhibit 9.

11 MS. CABALLERO: And for your purposes  
12 it's going to be on here (indicating).

13 (Exhibit 9 was marked for identification.)

14 MS. CABALLERO: The video is entitled  
15 "H&S Performance 2011 6.6L LML Duramax Straight  
16 Pipe." And we're going to watch this video.

17 (The video was played.)

18 Q. BY MS. CABALLERO: Do you recognize  
19 this video?

20 A. Sure do.

21 Q. Can you describe for us generally what  
22 it is.

23 A. A video proving that we had the  
24 technology to tune and modify the ECM on that  
25 particular vehicle.

1 Q. Do you know when it was filmed?

2 A. I do not off the top of my head.

3 Q. Were you there at the time of filming?

4 A. I was likely part of that, yes.

5 Q. Can you describe where it was filmed.

6 A. Likely at our shop, part of it, and  
7 around the shop.

8 Q. There's a road there in that video.

9 Do we need to play it again? Do you know what  
10 road that is?

11 A. I don't off the top of my head.

12 Q. Do you know what equipment was used to  
13 film the video?

14 A. GoPro.

15 Q. Is this H&S equipment?

16 A. Yes.

17 Q. Is this equipment you consider  
18 reliable?

19 A. Yes.

20 Q. Was the equipment in good working  
21 order at the time of filming?

22 A. Yeah.

23 Q. Do you know who was filming it?

24 A. I don't remember.

25 Q. Have you used the GoPro equipment

1 before for filming?

2 A. Yes.

3 Q. Did you watch the video after it was  
4 taken?

5 A. I'm sure I did, yes.

6 Q. Do you know who you watched it with?

7 A. I don't.

8 Q. Do you know where the file of this  
9 video would have been stored?

10 A. I don't.

11 Q. Do you think it would have been stored  
12 with the marketing people?

13 A. Yes.

14 Q. And those are H&S employees?

15 A. Yes.

16 Q. Do they have a separate office as part  
17 of the building?

18 A. Yep.

19 Q. Would it have been stored in their  
20 office?

21 A. Likely on a computer, yes.

22 Q. Do you know what computer it would  
23 have been stored on?

24 A. I don't.

25 Q. Do you know who would have had access

1 to this file?

2 A. No.

3 Q. Would it have been the people in the  
4 marketing department?

5 A. It would have been our employees, yes.

6 Q. And so anyone who had access to this  
7 file would have been an H&S employee?

8 A. Yes.

9 Q. Is this video an accurate and complete  
10 pictorial representation of the activities that  
11 occurred at the time of taping?

12 A. Yes.

13 Q. There were some sounds on the video at  
14 the beginning, I believe, of someone speaking,  
15 but it's not very clear. Do you know who that  
16 was?

17 A. I don't, unless -- if you want to  
18 replay it I can listen.

19 Q. It's not important. I just wanted --

20 A. Okay.

21 Q. There are noises from the truck. What  
22 kind of truck is that?

23 A. It's a Duramax. I mean, the make is a  
24 GMC.

25 Q. Do you know what year it is?

1 A. 2011.

2 Q. There were noises that the truck made.

3 A. Okay.

4 Q. Are those noises an accurate and  
5 complete audio recording of what occurred at the  
6 time of filming?

7 A. Yes.

8 Q. Who owns that truck in that video?

9 A. H&S Performance.

10 Q. And that truck is a licensed motor  
11 vehicle? It has a license plate?

12 A. Yes.

13 Q. Did you know if this vehicle had an  
14 EPA emission control level on the -- a label on  
15 the engine?

16 A. I do not know.

17 Q. Okay. Do you know what the rate of  
18 horsepower of this particular truck is?

19 A. 330 horsepower, I believe.

20 Q. There was a notation in the video of  
21 SCR, DOC, and DPF deleted. Starting with SCR.  
22 Can you explain what "SCR deleted" means.

23 A. The SCR system has been removed from  
24 the vehicle.

25 Q. Okay. How has it been removed?

1           A.       By manually removing it with tools.

2           Q.       Who removed it?

3           A.       I do not know.

4           Q.       Was it an H&S employee?

5           A.       Yes.

6           Q.       What does "DOC" stand for?

7           A.       Diesel oxidation catalyst.

8           Q.       It's noted on the video that that was

9 deleted.   What does that mean?

10          A.       It was removed from the vehicle.

11          Q.       Do you know who removed it?

12          A.       I do not know.

13          Q.       Is that a change from the OEM setting

14 by GMC?

15          A.       Correct.

16          Q.       Is the SCR removal a change from the

17 original GMC setting?

18          A.       Yes.

19          Q.       It also said on the video "DPF

20 deleted."   What does that mean?

21          A.       DPF has been removed.

22          Q.       And who was it removed by?

23          A.       I do not know.

24          Q.       Was it an H&S employee?

25          A.       Yes.

1 Q. What hardware is needed to remove the  
2 DPF, DOC, and SCR?

3 A. The SCR, no hardware is required other  
4 than manual tools to remove it. The DPF would  
5 require a pipe like we talked about earlier,  
6 FLO-PRO would have likely provided that. And  
7 what was the last one? DOC.

8 Q. DOC.

9 A. That's another pipe on the exhaust.

10 Q. Is the video that you provided to EPA  
11 in the 208(a) response the same as this video we  
12 watched today?

13 A. Yes.

14 Q. And is this the same as the video that  
15 was uploaded to YouTube?

16 A. Yes.

17 Q. I'm going to introduce as Exhibit 9  
18 the -- let me make this ten.

19 (Exhibit 10 was marked for identification.)

20 Q. BY MS. CABALLERO: Do you recognize  
21 Exhibit 10?

22 A. It looks like a web posting of a  
23 YouTube video.

24 Q. Is this the same YouTube video that  
25 was provided to EPA in the 208(a) response?



1 A. It looks like it is, yes.

2 Q. Okay. Do you have any reason to  
3 believe that it's different --

4 A. No.

5 Q. -- than the video?

6 Do you know who posted this video to  
7 YouTube?

8 A. I do not.

9 Q. Was the person who posted it an H&S  
10 employee?

11 A. Yes.

12 Q. Is there a process that H&S uses in  
13 posting the videos to YouTube?

14 A. Not that I'm aware of.

15 Q. So would it be fair to say that  
16 someone in marketing takes the video and simply  
17 uploads it to the YouTube account?

18 A. Correct.

19 Q. Okay. And it's your understanding  
20 that the video on YouTube is the same as that  
21 provided in the 208(a) response?

22 A. Correct.

23 Q. At any time was access to this video  
24 restricted on YouTube?

25 A. Yes.

1 Q. When was it restricted?

2 A. After our NOV, I believe, that we  
3 received from you guys.

4 MS. CABALLERO: I'd like to introduce  
5 as Exhibit 11 the Notice of Violation issued to  
6 H&S Performance by EPA on May 30th of 2012.

7 (Exhibit 11 was marked for identification.)

8 Q. BY MS. CABALLERO: So Mr. Hugie, is it  
9 your understanding that after receipt of this NOV  
10 that was issued by EPA May 30th, 2012, this video  
11 was removed from YouTube?

12 A. Yes.

13 Q. Do you know how soon after this NOV  
14 was received?

15 A. I do not know.

16 Q. Okay. Do you know who removed it from  
17 YouTube?

18 A. I do not know.

19 Q. Do you know why it was removed?

20 A. No.

21 Q. Was there instruction communicated to  
22 someone in marketing to remove the video?

23 A. I'm sure, yes.

24 Q. Do you know who communicated that  
25 instruction?

1           A.       Likely my partner, Casey Shirts.

2           Q.       On Exhibit 10 there is a notation that  
3 this video was uploaded by H&S Performance on  
4 January 4th, 2011. Do you see that notation?  
5 It's right under the --

6           A.       Yep, I see it right there.

7           Q.       Is that correct?

8           A.       Yes.

9           Q.       So was this video available without  
10 restriction on YouTube between January 4th, 2011,  
11 and the date of the receipt of the NOV?

12          A.       That sounds correct, yes.

13          Q.       Was there any emission testing done on  
14 the vehicle that we see in the YouTube video?

15          A.       No.

16          Q.       The video represents, in words printed  
17 on the video, that SCR, DOC, and DPF were  
18 deleted, and we asked you how that was done.  
19 Would part of the SCR system also be removed  
20 through the use of the FLO-PRO pipe?

21          A.       There is a SCR ejector on the exhaust  
22 system, yes, but it's not necessary to have a  
23 pipe to remove the SCR, no.

24          Q.       And I just want to confirm the YouTube  
25 video was an accurate and complete representation

1 of the video that was filmed by H&S at your  
2 offices and on the local road?

3 A. Correct.

4 Q. Moving on to Exhibit 12, which is also  
5 going to be a YouTube video. It's going to be  
6 one you provided to us in the 208(a) response.  
7 It's the twin turbo.

8 So we're going to play Exhibit 12 for  
9 you now. It was identified in the 208(a)  
10 response as H&S Performance 6.4 Twin Turbo  
11 Powerstroke.

12 (Exhibit 12 was marked for identification.)

13 (The video was played.)

14 Q. BY MS. CABALLERO: For this  
15 Exhibit 12, do you recognize this video?

16 A. I do.

17 Q. And can you describe for us what it  
18 is.

19 A. A vehicle driving on the road.

20 Q. What type of vehicle?

21 A. A Ford.

22 Q. What year is that Ford?

23 A. 2008.

24 Q. Do you know who owns that Ford?

25 A. I don't currently.

1 Q. At the time of the filming of the  
2 video, do you know who owned that Ford?

3 A. It was mine.

4 Q. Yours in your personal capacity, or  
5 yours as an H&S employee?

6 A. I believe personal.

7 Q. Personal capacity?

8 A. Yeah.

9 Q. Do you know when this was filmed?

10 A. I could tell you by the upload date.  
11 I want to say 2008, 2009, somewhere in there.

12 Q. Okay. The upload date -- and let's  
13 introduce this as Exhibit 13.

14 Mr. Hugie, you're referring to the  
15 upload date of this video on YouTube; is that  
16 correct?

17 A. Yes.

18 (Exhibit 13 was marked for identification.)

19 Q. BY MS. CABALLERO: Okay. So you  
20 believe that this video was filmed on the same  
21 day it was upload?

22 A. It would have been approximately  
23 within a week of that date.

24 Q. So the date you're referring to is  
25 December 2nd, 2008. So the first week or so of

1 December this video was filmed?

2 A. Correct.

3 Q. Were you there at the time of filming?

4 A. Yep.

5 Q. Do you know what equipment was used to  
6 film this video?

7 A. GoPro.

8 Q. Is this the same equipment you had  
9 previously mentioned?

10 A. (Witness nods head.)

11 MR. CLARKSON: You didn't answer  
12 audibly.

13 THE WITNESS: Yes.

14 Q. BY MS. CABALLERO: This was equipment  
15 you considered reliable?

16 A. Yes.

17 Q. This equipment was in good working  
18 order at the time of filming?

19 A. Yes.

20 Q. Do you know who filmed this video?

21 A. Payton Hugie, my brother.

22 Q. Did you watch the video after it was  
23 taken by Payton?

24 A. I did.

25 Q. Did you watch it with anyone other

1 than Payton?

2 A. Not that I know of, no.

3 Q. Do you know where the file of this  
4 video was kept?

5 A. I don't.

6 Q. Would it have been kept in the  
7 marketing department?

8 A. Likely, yes.

9 Q. Were there other locations where it  
10 may have been stored at H&S other than the  
11 marketing department?

12 A. Not to my knowledge, no.

13 Q. Other than the -- did the marketing  
14 department have access to this file?

15 A. Yes.

16 Q. Other than the marketing department,  
17 would anyone else have had access to this file?

18 A. Payton.

19 Q. Is this video an accurate and complete  
20 pictorial representation of the activities that  
21 occurred at the time of taping?

22 A. Yes.

23 Q. The only sounds I was able to hear on  
24 the video were sounds made by the truck. Is that  
25 correct?

1 A. Correct.

2 Q. I didn't hear any voices. Did you  
3 hear any voice?

4 Are the sounds that were recorded on  
5 this video an accurate and complete audio  
6 recording of what occurred at the time of  
7 filming?

8 A. Yes.

9 Q. Where was this video filmed?

10 A. It looks to be out on the Arizona  
11 strip, on a private road.

12 Q. What is the "Arizona strip"?

13 A. The Arizona strip is an area south of  
14 St. George just across the Utah/Arizona border.

15 Q. Does that mean this was filmed in the  
16 state of Arizona?

17 A. Could have been, yes. I'm not  
18 entirely sure exactly where that road lies, but I  
19 know it's really close to the border.

20 Q. So it was filmed -- this was either  
21 filmed in Utah or Arizona?

22 A. Correct.

23 Q. Okay. This vehicle you had said was  
24 your own vehicle?

25 A. Correct.



1 Q. It's a licensed motor vehicle?

2 A. Yes.

3 Q. What H&S device, if any, is used in  
4 this video?

5 A. In that particular video, the engine  
6 was tuned by Spartan Technologies.

7 Q. What is Spartan Technologies?

8 A. A competitor in our diesel tuning  
9 industry.

10 Q. If I understand correctly, you're  
11 saying that Spartan Technologies was used to  
12 create the smoky effects used in this video; is  
13 that correct?

14 A. Correct.

15 Q. So why was H&S showcasing Spartan  
16 Technologies?

17 A. We were looking to get into the before  
18 market -- this was our first video to see how the  
19 market would respond.

20 Q. Okay. Are you aware whether this  
21 vehicle had an EPA emission control label on the  
22 engine?

23 A. I do not know.

24 Q. Do you know what the rate of  
25 horsepower of this vehicle is?

1           A.           Around 350 horsepower.

2           Q.           Is the video that you provided to EPA  
3 in the 208(a) response on March 2nd, 2014, the  
4 same as the one that was then made available on  
5 YouTube?

6           A.           Yes.

7           Q.           Do you know who posted the information  
8 to YouTube?

9           A.           I do not.

10          Q.           Would it have been someone in the  
11 marketing department?

12          A.           Yes.

13          Q.           And the person in the marketing  
14 department was definitely an H&S employee?

15          A.           Yes.

16          Q.           Do you have any reason to believe the  
17 YouTube video is different than the one provided  
18 in the 208(a) response?

19          A.           Nope.

20          Q.           Is the YouTube video an accurate and  
21 complete representation of the video that was  
22 filmed at the Arizona strip?

23          A.           Yes.

24          Q.           Looking at Exhibit 13, have you seen  
25 this YouTube page before?

1           A.       Yes, I have.

2           Q.       Can you describe for me, if you know,  
3 what "Screw you DPF" means?

4           A.       I believe that's a comment from  
5 someone that has seen the video and that is  
6 unhappy with their DPF system.

7           Q.       Was access to this video restricted on  
8 YouTube?

9           A.       Yes.

10          Q.       Do you know when it was restricted?

11          A.       I do not know the exact date.

12          Q.       Would it have been approximately the  
13 same date as the Notice of Violation that was  
14 received?

15          A.       Yes.

16          Q.       Do you know who, if anyone, gave the  
17 direction to remove this video from YouTube?

18          A.       It would have been Casey Shirts, my  
19 partner.

20          Q.       Between December 2nd, 2008, the date  
21 that this video was uploaded by H&S Performance  
22 to YouTube, and the date of this NOV, would this  
23 video have been available without restriction on  
24 YouTube?

25          A.       Yes.

1 Q. Was there any emission testing done on  
2 this vehicle by H&S?

3 A. No.

4 Q. We have one more video, and it's going  
5 to be Exhibit 14. And it's entitled "DPF Delete  
6 for 6.7L Dodge Cummins."

7 (Exhibit 14 was marked for identification.)

8 (The video was played.)

9 MS. CABALLERO: And I'm also going to  
10 introduce as Exhibit 15 the posting of this video  
11 on YouTube.

12 (Exhibit 15 was marked for identification.)

13 Q. BY MS. CABALLERO: Do you recognize  
14 this video?

15 A. I do.

16 Q. What is it?

17 A. A video of a vehicle.

18 Q. Do you know when it was filmed?

19 A. I would say 2007.

20 Q. And why would you say that?

21 A. Because it was posted in 2007.

22 Q. So you're referring to Exhibit 15,  
23 which is a page from YouTube that has the  
24 statement "Uploaded about H&S Performance  
25 October 18, 2007," on it; is that correct?

1           A.       Correct.

2           Q.       And based on the 2007 date, you  
3 believe that this video was filmed around this  
4 time; is that correct?

5           A.       Yep.

6           Q.       Were you there at the time of the  
7 filming?

8           A.       I don't think I was there on this  
9 video, no.

10          Q.       Do you know who's driving this truck?

11          A.       I don't. There were numerous trucks  
12 on that video. I'm not sure who was driving any  
13 of them.

14          Q.       Let me just backtrack for a moment to  
15 Exhibit 12, the twin turbo video.

16                   Do you know who was driving in that  
17 video?

18          A.       I was driving that truck.

19          Q.       In Exhibit 9, the 2011 6.6 LML  
20 straight pipe video, do you know who was driving  
21 that truck?

22          A.       I believe I was driving that truck.

23          Q.       So I apologize if I've just asked you  
24 this. Were you there at the time of the filming  
25 of this video?

1 A. I do not know.

2 Q. Okay. Do you know what equipment was  
3 used to film this video?

4 A. A GoPro.

5 Q. Is this the same GoPro equipment that  
6 you referenced earlier?

7 A. Yes.

8 Q. Equipment you considered reliable and  
9 in good working order at the time of the filming?

10 A. Yes.

11 Q. Do you know who filmed this video?

12 A. I do not.

13 Q. Okay. Did you watch the video after  
14 it was filmed?

15 A. Yes.

16 Q. Do you know who you watched it with?

17 A. I don't.

18 Q. Do you know why you watched it?

19 A. I don't.

20 Q. Do you know where the file of this  
21 video that you provided to us in the 208(a)  
22 response would have been kept?

23 A. No.

24 Q. Would it have been kept in the  
25 marketing department?

1 A. Likely, yes.

2 Q. By an H&S employee?

3 A. Yes.

4 Q. Would there have been other locations  
5 where it was stored?

6 A. Perhaps.

7 Q. Do you know what locations those might  
8 have been?

9 A. I don't.

10 Q. Okay. Other than yourself and the  
11 marketing department, do you know who else would  
12 have had access to this video that you provided  
13 to us in the 208(a) response?

14 A. Payton Hugie, my brother, I believe he  
15 was involved in filming.

16 Q. Is this video, to your knowledge, an  
17 accurate and complete pictorial representation of  
18 the activities that occurred at the time of  
19 taping?

20 A. Yes.

21 Q. The sounds on the video that I heard  
22 were only the sounds of the main truck. Did you  
23 hear any other sounds?

24 A. No.

25 Q. Are the sounds that were recorded in

1 this video an accurate and complete audio  
2 recording of what occurred at the time of  
3 filming?

4 A. Yes.

5 Q. The main truck that we watched in this  
6 video -- I don't remember seeing the other  
7 trucks. Maybe we should watch it again.

8 So this is Exhibit 14 that we're now  
9 watching again.

10 (The video was played.)

11 Q. BY MS. CABALLERO: And I apologize, is  
12 that not the same truck throughout the entire  
13 video?

14 A. It's not. There are two. One's  
15 black, and one's blue. It's fine.

16 Q. Okay. Let's start with the black  
17 truck. Do you know the model year of that truck?

18 A. 2008.

19 Q. And the manufacturer?

20 A. Dodge.

21 Q. And the model?

22 A. Ram 2500.

23 Q. Okay. I believe the black truck had a  
24 license plate on it; is that correct?

25 A. Correct.



1 Q. Do you know where that black truck was  
2 filmed on this road?

3 A. I do not. I could make some  
4 assumptions based on the video, but I'm not sure  
5 exactly.

6 Q. And you weren't there at the time of  
7 filming?

8 A. I don't believe I was.

9 Q. Okay. Is there an H&S device used on  
10 the black truck, the 2008 Dodge?

11 A. There's not.

12 Q. Is there any other type of tuning  
13 device, to your knowledge, used on that truck?

14 A. I don't believe so. Actually, yes,  
15 there was. There was an Edge -- Edge Juice With  
16 Attitude on that truck.

17 Q. What does the Edge Juice With Attitude  
18 do to the truck?

19 A. Increases horsepower.

20 Q. Is that why the gauge was being shown  
21 on the video screen?

22 A. Yes.

23 Q. Do you know what the rated horsepower  
24 is of the black truck?

25 A. 350 horsepower, rough.

1 Q. And did the Edge alter that  
2 horsepower, to your knowledge?

3 A. Yes.

4 Q. To what level?

5 A. I believe their maximum horsepower  
6 tuning took it up about 100 horsepower.

7 Q. To approximately 450 horsepower?

8 A. Yes.

9 Q. Who owns the black truck, to your  
10 knowledge?

11 A. Jerad Wittwer.

12 Q. Is that Mr. Wittwer, the president of  
13 PDI?

14 A. Correct.

15 Q. At this time was there an affiliation  
16 between PDI and H&S in the filming of videos?

17 A. No affiliation, other than the fact we  
18 borrowed his truck to test.

19 Q. Was Mr. Wittwer involved in the making  
20 of this video?

21 A. No.

22 Q. Why was H&S using a truck that didn't  
23 belong to their own company and a device that  
24 wasn't their own device and uploading a video to  
25 YouTube?

1           A.       To market a device that we were  
2 planning on releasing to the public.

3           Q.       To market the Edge device?

4           A.       No. That was during our testing of  
5 the simulators.

6           Q.       Okay. Perhaps we're crossing paths  
7 here.

8                   Was there any technology developed by  
9 H&S in that video that we saw as Exhibit 14?

10          A.       I'm sorry, I may have misunderstood  
11 earlier. Yes. The simulators.

12          Q.       The simulators?

13          A.       Yes.

14          Q.       What was the purpose of the  
15 simulators?

16          A.       To allow removal of sensors on the  
17 vehicle.

18          Q.       What types of sensors?

19          A.       Temperature sensors.

20          Q.       Was any pollution control technology  
21 removed from the vehicle -- the black truck that  
22 we saw in Exhibit 14?

23          A.       Yes.

24          Q.       What pollution control technologies?

25          A.       Diesel particulate filter.

1 Q. Turning to the other truck in the  
2 video, the blue truck. What year is that truck,  
3 to your knowledge?

4 A. 2007.

5 Q. What is the model?

6 A. Dodge Ram.

7 Q. Do you know whose vehicle that truck  
8 is?

9 A. Casey Shirts.

10 Q. Does the vehicle, to your knowledge,  
11 belong to him in an individual capacity or as an  
12 employee of H&S?

13 A. Individual.

14 Q. And I believe I saw that truck also  
15 had a license plate; is that correct?

16 A. Correct.

17 Q. And you didn't know either one of the  
18 folks driving these trucks?

19 A. I do not recall who was driving, no.

20 Q. So for the blue truck, was there an  
21 H&S device used?

22 A. The simulators.

23 Q. And the purpose of the simulators is  
24 as you've just described?

25 A. Yes.

1 Q. Okay. So it altered the OEM of the  
2 Dodge Ram?

3 A. Correct.

4 Q. What was the horsepower of the vehicle  
5 rated?

6 A. 350, roughly.

7 Q. And did that change after use of the  
8 simulators?

9 A. The simulators do not change  
10 horsepower.

11 Q. Was there a device on this -- tuning  
12 device on this truck, the blue truck, other than  
13 the simulators?

14 A. There was an Edge product.

15 Q. Was it the Edge Juice?

16 A. It was.

17 Q. Okay. So was the horsepower of this  
18 vehicle changed as a result of the Edge --

19 A. Yes.

20 Q. -- product?

21 And what was that?

22 A. 450.

23 Q. Okay. Is the video that was provided  
24 to EPA in the 208(a) response dated March 2nd,  
25 2015, the same as the one available on YouTube?

1 A. Yes.

2 Q. Do you know who posted this particular  
3 video --

4 A. I do not.

5 Q. -- to YouTube?

6 Was it an H&S employee?

7 A. Yes.

8 Q. Do you have any reason to believe the  
9 YouTube video is different than the one provided  
10 in the 208(a) response?

11 A. No.

12 Q. Is the YouTube video an accurate and  
13 complete representation of the video that was  
14 filmed at a location unknown to you?

15 A. Yes.

16 Q. Was access to this video restricted on  
17 YouTube?

18 A. Yes, I believe so.

19 Q. Do you know why?

20 A. I don't.

21 Q. Is it because of the NOV received by  
22 H&S?

23 A. Likely, yes.

24 Q. Who would have given the direction to  
25 restrict access to the video?

1 A. Casey Shirts.

2 Q. Exhibit 15 identifies that the video  
3 was uploaded, as I had mentioned before,  
4 October 17th, 2007. Was this video generally  
5 available on YouTube between 2007 and the date of  
6 the NOV received?

7 A. Yes.

8 Q. Was there any emission testing, to  
9 your knowledge, done on the black truck and the  
10 blue truck that we saw in Exhibit 14?

11 A. No.

12 MS. CABALLERO: So Mr. Clarkson, the  
13 USB drive that I've given you will have a copy of  
14 what has been marked as Exhibit 9, 12, and 14.

15 We're going to move away from YouTube  
16 and on to Facebook.

17 (Exhibits 16-18 were marked for identification.)

18 Q. BY MS. CABALLERO: So I'm going to  
19 provide to you Exhibit 16, 17, and 18, and we're  
20 going to discuss this.

21 Does H&S operate a Facebook page?

22 A. Yes.

23 Q. Do you know who created the Facebook  
24 account?

25 A. I do not.

1 Q. Would it likely have been someone in  
2 marketing?

3 A. Yes.

4 Q. Did you have access to the account?

5 A. Yes.

6 Q. Were you the manager of the account?

7 A. I believe I am a manager, yes.

8 Q. Do you know what e-mail address is  
9 associated with the Facebook account?

10 A. I do not.

11 MS. CABALLERO: Mr. Clarkson, we'd  
12 request on the record for you to provide an  
13 e-mail address for the Facebook account.

14 Q. Is the H&S Facebook account password  
15 protected?

16 A. Yes.

17 Q. Who would have had that password?

18 A. The marketing team and anyone else  
19 that's made a manager of the page.

20 Q. Besides yourself and the marketing  
21 team, who else would have been made a manager of  
22 the Facebook page?

23 A. I do not know.

24 Q. Would it have been an H&S employee?

25 A. Yes.



1 Q. Do you have any information that H&S's  
2 Facebook account was hacked or otherwise accessed  
3 by other than the H&S employees?

4 A. No.

5 Q. Turning to Exhibit 16. Do you  
6 recognize this exhibit?

7 A. I do not.

8 Q. Okay. I will note at the top of the  
9 page "H&S Performance's Photos," and at the  
10 bottom of the page it has  
11 "facebook.com/photo.php."

12 Did H&S upload photos --

13 A. Yes.

14 Q. -- to Facebook?

15 Do you know who uploaded this photo?

16 A. I don't. This -- by the looks of the  
17 picture -- oh, actually, it was H&S. Someone at  
18 H&S must have uploaded it, yes.

19 Q. So if we look at Exhibit 16, there is  
20 a designation that there's an album of H&S  
21 Performance's photos and wall photos. Would H&S  
22 have a wall where they would post their photos on  
23 Facebook?

24 A. Yes.

25 Q. And can you describe this picture for

1 us in Exhibit 16.

2 A. It looks to me like a vehicle showing  
3 a mirror, and in the mirror is a police officer.

4 Q. And do you know what vehicle this  
5 might be?

6 A. Just based off the mirror, it looks  
7 like a Dodge Ram.

8 Q. Do you know if this vehicle had a  
9 tuning device?

10 A. I don't.

11 Q. Okay. And is there a comment by H&S  
12 Performance on this Facebook page --

13 A. There is.

14 Q. -- as to the content of this picture?  
15 And what is the comment?

16 A. The line says:  
17 "Maybe the tuning works too good?"

18 Q. Now, do you know who would have posted  
19 that comment?

20 A. I don't.

21 Q. Did you post this comment?

22 A. Not that I know of, no.

23 Q. And this is the H&S Performance  
24 Facebook account, correct?

25 A. It is.

1 Q. So only someone who worked for H&S  
2 could have posted this comment?

3 A. Correct.

4 Q. Were computers in the marketing  
5 department used to post photos on Facebook?

6 A. Yes.

7 Q. To your knowledge, were the computers  
8 in good working order at the time of posting?

9 A. Yes.

10 Q. You have not seen this post before?

11 A. I likely have, but I don't recognize  
12 it.

13 Q. Okay. In this photo does this appear  
14 to be a highway?

15 A. It appears to be a road.

16 Q. But you're not familiar with either  
17 the vehicle itself -- it's not an H&S vehicle?

18 A. I do not know. I don't know whose  
19 vehicle that is.

20 Q. You think you may have seen this  
21 picture on Facebook at some point?

22 A. Correct.

23 Q. So to your knowledge, is this  
24 exhibit a complete and accurate representation of  
25 H&S's Facebook page at the time --

1 A. Yes.

2 Q. -- this was printed?

3 I note for the record this was printed  
4 on September 17th of 2012.

5 A. Yes.

6 Q. I'm going to turn to Exhibit 17 and  
7 represent to you -- well, Mr. Hugie, would you  
8 please read at the bottom of Page 17 the address  
9 which this originated.

10 A. [Www.facebook.com/hsperformance](http://Www.facebook.com/hsperformance).

11 Q. And was that H&S Performance's  
12 location on Facebook on the Internet?

13 A. It looks to be so, yes.

14 Q. And are you familiar with this  
15 category of recommendations for H&S Performance  
16 that are indicated in this exhibit?

17 A. I'm not.

18 Q. Have you ever read the pages on  
19 Facebook where recommendations for H&S  
20 Performance were located?

21 A. I don't even know where they're  
22 located at.

23 Q. You've never seen this before?

24 A. I have not.

25 Q. Who was in charge, if anyone, of

1 reviewing this type of information on Facebook  
2 for H&S?

3 A. I do not know that we ever put anyone  
4 in charge of that. If anyone was in charge it  
5 would have just been one of the marketing team.

6 Q. So would this -- if anyone monitored  
7 it, it would have been monitored by the marketing  
8 team?

9 A. Correct.

10 Q. And who was in charge of the marketing  
11 team?

12 A. Casey Shirts.

13 Q. So turning to the second page of  
14 Exhibit 17, I see at the top a comment by a  
15 Mr. James Jennings. Do you know a Mr. James  
16 Jennings?

17 A. I do not.

18 Q. He appears to be using a Mini Maxx  
19 device in his 6.4L, and the mileage and  
20 unbelievable power is deadly. And you see the  
21 word "mileage." What's your understanding of  
22 what that means?

23 A. Fuel efficiency of the vehicle.

24 Q. Okay. Going further down that page to  
25 Mr. McIntosh, Chris McIntosh. Do you know

1 Mr. McIntosh?

2 A. I don't.

3 Q. "I run the Mini Maxx on my 6.4 and  
4 WOW!!! MPMs and more power than I  
5 could imagine. Loving it."

6 Do you know what the designation "MPG"  
7 means?

8 A. Miles per gallon.

9 Q. Turning to the last page of  
10 Exhibit 17, there's a comment from Mr. Amman.  
11 Can you read that comment, please.

12 A. "Fantastic product; great results;  
13 fuel economy jumped from 13 to 20  
14 in city. Power is incredible."

15 Q. Can you explain to me, if you know,  
16 what "fuel economy jumped from 13 to 20 in the  
17 city" means?

18 A. It means his economy used to be 13  
19 prior to our product, and now it is 20.

20 Q. And the city designation?

21 A. I have no idea. Could be anywhere in  
22 the world.

23 Q. To your knowledge, is this exhibit,  
24 Exhibit 17, a complete and accurate  
25 representation of H&S's Facebook page at the time

1 that this was printed of September 17, 2012?

2 A. To my knowledge, it looks fine, yes.

3 Q. Okay. Moving on to Exhibit 18. Do  
4 you recognize this exhibit?

5 A. I don't.

6 Q. Were there posts by various people on  
7 H&S's website?

8 A. This looks to be Facebook postings,  
9 yes.

10 Q. And how can you tell that?

11 A. Just based off the address at the  
12 bottom of the page.

13 Q. Which is what? Can you read that.

14 A. [Www.facebook.com/h&sperformance](http://www.facebook.com/h&sperformance).

15 Q. But you've never seen this particular  
16 page before?

17 A. Not to my knowledge, no.

18 Q. So I'm going to ask you to turn to a  
19 comment by Mr. Rhodes on the fourth page of  
20 Exhibit 18 at the bottom of the page.

21 Do you know Branden Rhodes?

22 A. I don't.

23 Q. Can you read his comment, please.

24 A. I'm not seeing the fourth page.

25 Q. So at the very bottom, and I think we

1 might have already highlighted when we printed  
2 it --

3 A. Branden Rhodes. You would like me to  
4 read it?

5 Q. Yes, please.

6 A. "Just did the Mini Maxx and I  
7 am loving it! The fuel mileage  
8 and power increase is insane!  
9 Quick question. How do you shut  
10 off the seat belt beeper? It says  
11 you can but I can't find where to  
12 do it at. Thanks!"

13 Q. And so when he's referring to a fuel  
14 mileage, that would have been a change to his  
15 fuel mileage based on the Mini Maxx?

16 A. Based on his comment, yes.

17 Q. Okay. There's a comment underneath  
18 his comment by Levi Fenner. Is that someone that  
19 works at H&S?

20 A. No.

21 Q. Moving on towards the end of the PDF  
22 there's a comment by Russell Flair. I think I've  
23 identified it for you with a Post-it there.

24 Okay.

25 Do you know Mr. Flair?



1           A.       I do not.

2           Q.       He represents here that he went to the  
3 Bristol Races. Do you know what the Bristol  
4 Races are?

5           A.       I don't.

6           Q.       "Came back through Gatlinburg sat  
7 in traffic and then went through  
8 the Smokey Mountain National Park.  
9 When I got home after 2300 miles  
10 it figured out to be 21.9 mpg  
11 average."

12                   Based on your reading of this post,  
13 does it appear that Mr. Flair is using the Mini  
14 Maxx for general driving on the street or  
15 highway?

16          A.       It does look to be so, yes.

17          Q.       Underneath Mr. Flair's comment there  
18 was a comment by H&S Performance. Can you read  
19 that comment to me.

20          A.       "Awsome!! If the wife is a believer,  
21 then anyone can be convinced."

22          Q.       Do you know who would have posted that  
23 comment?

24          A.       I do not.

25          Q.       Would it have been someone who worked

1 for H&S Performance?

2 A. Likely, yes.

3 Q. An H&S Performance employee?

4 A. Likely, yes.

5 Q. Based on your review of this and the  
6 notation here by someone at H&S Performance, is  
7 it your understanding that an H&S Performance  
8 employee was monitoring the Facebook pages?

9 A. Monitoring that specific post, yes.

10 Q. If you just flip to the next page  
11 there's a notation there with the Post-it.  
12 There's a comment by Mr. Jason Benson.

13 Do you know Mr. Benson?

14 A. I don't.

15 Q. Can you read his comment, please.

16 A. "My bosses Ram 5500 6.7 is big  
17 on fuel. What do you suggest to  
18 improve mpg but retain  
19 reliability."

20 Q. And underneath that there is a comment  
21 by H&S Performance. Do you know who might have  
22 posted that comment?

23 A. I do not.

24 Q. Does H&S direct Mr. Benson to help  
25 elsewhere?

1 A. Can you rephrase that?

2 Q. It looks like this comment that was  
3 posted directs Mr. Benson to an online forum with  
4 others driving the same truck.

5 A. Yes, they refer him to  
6 Cumminsforum.com.

7 Q. But you don't know who posted --

8 A. I don't.

9 Q. -- this? Okay.

10 A. It does look like he was referred to  
11 an emissions present of H&S Performance products  
12 (sic).

13 Q. Yes. So the person who may have been  
14 monitoring and commenting on this Facebook page  
15 would likely have been in the marketing  
16 department?

17 A. Yes.

18 Q. But it would have been somebody in the  
19 H&S company?

20 A. Likely, yes.

21 Q. Do you have any reason to believe that  
22 it wouldn't have been someone who worked for H&S?

23 A. I don't know who was put -- the  
24 managers of this Facebook page. Could have been  
25 anyone, to my knowledge.

1 Q. "Anyone" meaning someone other than an  
2 H&S employee?

3 A. It could have been. I don't know who  
4 the managers were of this page.

5 Q. Did you have any information at any  
6 time that the manager wasn't an H&S employee?

7 A. No.

8 Q. Did you have any information that this  
9 account was hacked or otherwise accessed by other  
10 than H&S employees?

11 A. Not specifically, no.

12 Q. I think we are done with Facebook --  
13 oh.

14 To your knowledge, is this exhibit a  
15 complete and accurate representation of H&S's  
16 Facebook page at the time of this printout, which  
17 was September 17, 2012?

18 A. Yes.

19 MS. CABALLERO: Okay. I'd like to  
20 mark Exhibits 19, 20, and 21.

21 (Exhibits 19-21 were marked for identification.)

22 Q. BY MS. CABALLERO: Did H&S Performance  
23 have a forum on their website for potential  
24 customers or current customers of their products?

25 A. Yes.

1 Q. So turning to Exhibit 19. Do you  
2 recognize this exhibit?

3 A. Not off the top of my head, but I can  
4 assume it looks like from our forum.

5 Q. Okay. Do you know who created the H&S  
6 Performance website?

7 A. Scott Dana.

8 Q. Does Mr. Dana still work for H&S  
9 Performance?

10 A. He does not.

11 Q. Do you know when he stopped working  
12 for H&S Performance?

13 A. I don't off the top of my head.

14 Q. Approximately?

15 A. 2012.

16 Q. Do you know when he created the  
17 website?

18 A. 2008.

19 Q. Was he involved in the operation of  
20 the website?

21 A. Yes.

22 Q. Is he the person responsible for  
23 managing the website?

24 A. For their website's basic functions,  
25 yes.

1 Q. Did he have other job  
2 responsibilities?

3 A. At H&S Performance?

4 Q. Yes.

5 A. Yes, multiple.

6 Q. And what were they?

7 A. Any kind of marketing, advertising,  
8 print material.

9 Q. So he not only maintained the website,  
10 he also worked in the marketing department?

11 A. In my opinion, the website is  
12 marketing.

13 Q. So Mr. Dana worked in the marketing  
14 department and one of his job responsibilities  
15 was the website?

16 A. Correct.

17 Q. Was he also the technical person that  
18 maintained the website?

19 A. One of the few that would maintain it,  
20 yes.

21 Q. Do you know who the other people were?

22 A. No. The others mentioned that were in  
23 the marketing department.

24 Q. Okay. Is there an e-mail address  
25 associated with this website?

1           A.       Not specifically to the website  
2   itself. I mean, we have a contact page that will  
3   list e-mail addresses to get ahold of us.

4           Q.       In Mr. Dana's work in posting to the  
5   website information about H&S, did he have a  
6   specific account that he did that from?

7           A.       No.

8           Q.       So how did H&S protect this website  
9   from being appropriated by others?

10          A.       As far as someone else logging in and  
11   changing information?

12          Q.       Yes.

13          A.       I'm unsure of how servers are set up  
14   like that. I'm not a web guy so I don't know.

15          Q.       Do you have any information to believe  
16   that at any time your website was hacked or  
17   appropriated by others?

18          A.       To the best of my knowledge, no, but I  
19   cannot be sure.

20          Q.       Did you ever report to anyone that  
21   your website had been hacked or appropriated by  
22   others?

23          A.       Not that I know of, no.

24          Q.       Are there discussion forums on this  
25   website?

1 A. Yes.

2 Q. Do you know whose idea that was?

3 A. Mine or Casey's. Probably a  
4 combination of both.

5 Q. And do you know what the purpose of  
6 the forum or forums were?

7 A. For helping customers.

8 Q. Were there different topics for the  
9 forums?

10 A. I believe so, yes.

11 Q. And who thought of the ideas for the  
12 topics?

13 A. Likely Casey Shirts or I.

14 Q. Would there have been anyone else,  
15 other than the two of you, who identified the  
16 forum topics?

17 A. When you say "topic," can you describe  
18 that a little better?

19 Q. Sure. Let's go to Exhibit 19, and  
20 there's a topic here at the top, "Topic: What  
21 settings for best MPG." Is that a topic that you  
22 or Mr. Shirts would have created? Or is that  
23 something stemming from Dennis the Menace's  
24 question?

25 A. That's Dennis the Menace created that.



1 Q. Okay. So if Dennis the Menace then  
2 created this question, these other people were  
3 commenting on his question?

4 A. Correct.

5 Q. And all this was is a host website --

6 A. Yes.

7 Q. -- is that correct?

8 A. Yes.

9 Q. So when Dennis the Menace is asking  
10 what settings were the best mile per gallon, can  
11 we tell from Exhibit 19 for what type of vehicle?

12 A. It looks like a 2008 Ford F-250.

13 Q. Okay. And is he using an H&S device?

14 A. According to his post, yes. He says  
15 HD Mini Maxx.

16 Q. Did Mr. -- Dennis the Menace, he  
17 identifies he's using this more for city driving  
18 than highway, correct?

19 A. Yes, it looks like he does say that.

20 Q. All right. You don't know who Dennis  
21 the Menace is?

22 A. I don't.

23 Q. Okay. Is city driving considered  
24 off-road driving or competition driving?

25 A. Not in my opinion, no.

1 Q. Below the posting of Dennis the Menace  
2 on the H&S Facebook page is a posting by Super  
3 Duty 6.4. Do you know who represented them self  
4 as Super Duty 6.4 on this forum?

5 A. I don't.

6 Q. Okay. Can we tell from his posting  
7 what H&S device he's using?

8 A. He has an H&S Mini Maxx.

9 Q. Does it appear that Super Duty 6.4  
10 also drives on the highway with his Mini Maxx?

11 A. He's got some grammatical errors. I  
12 don't know if he meant to say --

13 Q. He does indeed.

14 A. -- I don't do a lot of highway  
15 driving, or if it -- it could perhaps mean I do a  
16 lot of highway driving. I'm not sure.

17 Q. All right. What does it mean, if you  
18 know, when he says "I run hot damn on hot"?

19 A. "Hot damn" is a power level we offer,  
20 and "hot" is the -- well, "hot" is the power  
21 level of that specific tune series.

22 Q. Okay. And so what would he have been,  
23 if you know, using this device for? What kind of  
24 vehicle?

25 A. This is a 2008 Ford F-350, according

1 to his signature underneath right there.

2 Q. Okay. To your knowledge, based on the  
3 information that Super Duty 6.4 has represented  
4 in Exhibit 19, does it look like the DPF has been  
5 removed since using a FLO-PRO pipe?

6 A. Yes. He does list a five-inch DP,  
7 which is down pipe back, which means he would  
8 have had to replace the DPF.

9 Q. Moving on to -- before I move on.  
10 Is -- to your knowledge is this exhibit a  
11 complete and accurate representation of this  
12 forum, "What settings for best MPG" as of the  
13 date that this exhibit was printed, which was  
14 September 10th of 2012?

15 A. Yes.

16 Q. Moving on to Exhibit 20. Is -- do you  
17 recognize this exhibit?

18 A. It looks to be another forum posting  
19 from H&S Performance forum.

20 Q. Do you know what topic was being  
21 discussed in this forum?

22 A. It looks like the CWB guy created a  
23 topic that says "setting on my Mini Maxx for best  
24 fuel mileage."

25 Q. And a question of logistics here, when

1 he says "this setting," who then says above  
2 "setting on Mini Maxx for best fuel mileage"? It  
3 seems to be a subset of his statement here. Is  
4 that someone at H&S that's cutting and pasting?

5 A. No. You create that -- when CWB, this  
6 user, goes on to create a topic, he types in  
7 this. H&S has no control over the topic name.

8 Q. But it's H&S's website, correct?

9 A. Correct.

10 Q. And did you know if someone in the  
11 marketing department was monitoring this forum?

12 A. Likely, yes.

13 Q. And do you know who that was?

14 A. Anyone in the marketing team.

15 Q. Do you know if it was their daily  
16 responsibility to monitor the forums on the  
17 website?

18 A. No. We do not require they monitor  
19 them. That was -- it was a in your downtime, see  
20 if you can help people online.

21 Q. Was that in their performance  
22 descriptions?

23 A. Performance descriptions?

24 Q. Do the employees in your marketing  
25 department have specified responsibilities that

1 are recorded in some way?

2 A. Not necessarily, no.

3 Q. Are all instructions provided to them  
4 verbal?

5 A. Yeah.

6 Q. They don't have any type of  
7 performance agreement for their particular job  
8 responsibilities?

9 A. Like a job description that they would  
10 do? I'm sure they've got job descriptions.

11 Casey Shirts, my partner, was more in charge of  
12 the employees than I am. I'm not aware of how  
13 they were given all their jobs.

14 MS. CABALLERO: Okay. I'd like to  
15 make a request on the record of the job  
16 descriptions of the individuals working in the  
17 marketing department at H&S.

18 Q. Understanding that you may not be as  
19 familiar with the marketing department as  
20 Mr. Shirts, who identified the information we see  
21 at the top of Exhibit 20? It says, "6.7L  
22 Cummins, 6.7L Cummins, Tech Questions."

23 A. Those are set up by H&S Performance.

24 Q. And would that have been someone in  
25 the marketing department?

1 A. Yes.

2 Q. So it's your understanding, then, that  
3 cwbymt1973 began this topic in a forum for this  
4 particular motor vehicle that was created by H&S?

5 A. Yes.

6 Q. Do you know who cwbymt1973 is?

7 A. I don't.

8 Q. Do you know the individual  
9 responsibility for the next posting, GaLawnCare?

10 A. I do not.

11 Q. He has a statement here, "Hot damn  
12 300" and he's referencing that in regards to the  
13 topic, which is "setting on Mini Maxx for best  
14 fuel mileage."

15 What does "Hot damn 300" mean, to the  
16 best of your knowledge?

17 A. It is a tune level we offer. A  
18 performance level.

19 Q. Turning the page to a post by Cummins  
20 Maxx. Do you know who Cummins Maxx is?

21 A. I do not.

22 Q. Can you read his post, please.

23 A. He states:

24 "Haha not yet, if I can figure  
25 this out I'll try to get them up

1                   in the next couple days. It's  
2                   reflex, some guys don't like it  
3                   for bed liner...it is a little  
4                   softer than line-x and rhino but  
5                   it holds a gloss really well."

6           Q.       Mr. Hugie, can I interrupt, because I  
7           don't mean to direct you to the wrong one.

8           A.       Wrong one.

9           Q.       Could you begin again with the -- and  
10          I apologize I was unclear -- the post above. It  
11          would be identified as post No. 8860.

12          A.       Yes, ma'am.

13                   "Yea that's def tru (sic), weather  
14                   conditions, temperature, highways  
15                   that are flat, highways that have  
16                   hills, tires, and so on. Sorry to  
17                   jack thread dieselpower77 just got  
18                   my rocker panels and all of the  
19                   bottom sprayed with the bed liner.  
20                   It looks awesome. I got about six  
21                   inches high around feners (sic)  
22                   and the same height you do along  
23                   the bottom, then it tucks in  
24                   behind the bumper on each side.  
25                   They give me a lifetime warranty

1                   on it, so thanks for the idea. I  
2                   live in PA this road salt and snow  
3                   kills these trucks around here so  
4                   I had no problem doin (sic) it."

5           Q.       Thank you.

6                   Is it your understanding from post  
7 8860 Cummins Maxx that this individual lives in  
8 Pennsylvania?

9           A.       According to the post, yes.

10          Q.       What type of device is he using?

11          A.       In his signature below he states that  
12 he has a 2011 6.7 liter Cummins with a Mini Maxx.

13          Q.       And he appears to be driving on the  
14 highway with his device, based on the content of  
15 his post?

16          A.       Yes.

17          Q.       And after the five-inch FLO-PRO in  
18 post 8860 at the bottom there, he says, "EGR  
19 delete and fuel shim." What does it mean "EGR  
20 delete and fuel shim" there?

21          A.       His EGR is removed in the vehicle, and  
22 he has a fuel shim kit installed.

23          Q.       What does a fuel shim kit do?

24          A.       A fuel shim adds washers to a relief  
25 valve on the fuel rail of a Cummins truck. It



1 increases the pressure holding capability of the  
2 fuel rail.

3 Q. Is it your understanding that this  
4 exhibit, which was printed on September 11th of  
5 2012, is a complete and accurate representation  
6 of H&S's forum at this time on settings on Mini  
7 Maxx for best fuel mileage?

8 A. Yes.

9 Q. Moving on to Exhibit 21. This  
10 exhibit has a slightly different format than the  
11 one we just looked at.

12 Do you recognize this exhibit?

13 A. Looks to be from the H&S Performance  
14 forum.

15 Q. And how can you tell that?

16 A. Based on the website at the top of the  
17 page.

18 Q. Okay. And that website is the H&S  
19 Performance website --

20 A. Correct.

21 Q. -- backslash one backslash forum?

22 A. Correct.

23 Q. And can you tell from Exhibit 21 what  
24 the topic was for this forum?

25 A. Looks like it was posted as topic "SCR

1 delete versus DPF delete."

2 Q. And both of those, SCR and DPF, are  
3 pollution control technologies, correct?

4 A. Yes.

5 Q. There's a post on the third page of  
6 this exhibit, Exhibit 21, by My Little  
7 Lightning. Do you know who My Little Lightning  
8 is?

9 A. I do not.

10 Q. My Little Lightning represents that  
11 he spoke to a tech at H&S and they've given some  
12 advice about a delete kit. Give you a minute to  
13 read that.

14 A. Okay.

15 Q. Are you familiar with what tech they  
16 may have spoken with?

17 A. No idea.

18 Q. Who would have directed the techs at  
19 H&S to provide advice about delete kits?

20 A. Who would have given?

21 Q. Who would have provided the direction?

22 A. About what the tech will respond?  
23 Casey Shirts or I.

24 Q. And what is the delete kit used for?

25 A. To remove emissions devices.

1 Q. Is this Exhibit 21, to your knowledge,  
2 a complete and accurate representation of the  
3 topic "SCR delete versus DPF delete" as of the  
4 time of this printing, which it appears to have  
5 been, from a designation on the bottom third  
6 page, July 27th, 2012, at 1:32 p.m.?

7 A. Yes.

8 MS. CABALLERO: We're going to move  
9 away from the H&S Performance website to the  
10 Duramax Forum. Do you need a break?

11 THE WITNESS: Nope. I'm okay. Thank  
12 you, though.

13 (Exhibits 22 and 23 were marked for  
14 identification.)

15 Q. BY MS. CABALLERO: So you have  
16 Exhibits 22 and 23. Can you tell me, if you  
17 know, what is the Duramax form?

18 A. A forum where any user of the Internet  
19 can go and trade an account and ask information  
20 or post information.

21 Q. And what is Duramax?

22 A. Duramax is an engine.

23 Q. Do you know who manufactures that  
24 engine?

25 A. Manufacture, I'm not sure I know.

1 General Motors uses it in their vehicles.

2 Q. So it's a General Motors engine for  
3 the General Motors vehicles?

4 A. Correct.

5 Q. Is H&S a supporting vendor of the  
6 Duramax Forum?

7 A. Not currently.

8 Q. Were they in the past?

9 A. Yes.

10 Q. Turning to Exhibit 22 -- actually, I  
11 have these reversed. Exhibit 23. Turn to  
12 Exhibit 23.

13 Are you familiar with this exhibit?

14 A. I'm not.

15 Q. If you look at the website at the  
16 bottom it says duramaxforum.com/hsperformance.

17 A. Okay.

18 Q. And there appears to be an  
19 administrator on the Duramax Forum who is saying  
20 "Welcome H&S Performance," and this is dated  
21 around -- it's dated on July 30th, 2009.

22 A. Correct.

23 Q. So I will represent to you that  
24 information. And did you become -- did H&S  
25 become a supporting vendor of the Duramax Forum

1 on July 31st, 2009?

2 A. That looks to be correct, according to  
3 this information.

4 Q. Do you believe that is not correct?

5 A. No.

6 Q. Do you know what the responsibilities  
7 are of a supporting vendor, if any?

8 A. To my knowledge, there are none.

9 Q. So what does it mean to be a  
10 supporting vendor?

11 A. They allow you to answer questions  
12 about your product on their forum.

13 Q. How did H&S become involved in the  
14 Duramax Forum?

15 A. Contact Duramax and you get their  
16 information how to become a vendor.

17 Q. Do you know who at H&S contacted the  
18 Duramax Forum?

19 A. I do not.

20 Q. Do you know who the contact was at the  
21 Duramax Forum?

22 A. I don't.

23 Q. Would it have been someone in the  
24 marketing department for H&S --

25 A. Yes.

1 Q. -- that was involved in this?

2 A. Yes.

3 Q. And they would have been responsible  
4 for contacting the Duramax Forum?

5 A. Correct.

6 Q. Would the marketing department have  
7 files on their contacts with the Duramax Forum?

8 A. I would assume so, yes.

9 MS. CABALLERO: I'd like to make a  
10 request on the record for any information that  
11 the marketing department has on correspondence  
12 and contact with the Duramax Forum.

13 Q. To your knowledge, does someone at H&S  
14 monitor the H&S portion of the Duramax Forum?

15 A. I do not know.

16 Q. Do you know if there's an e-mail  
17 account associated with the Duramax Forum?

18 A. I do not know.

19 Q. Who would know that information?

20 A. I could look it up. And I'm sure  
21 there -- I'm sure there will be some contact  
22 information.

23 MS. CABALLERO: In the same request,  
24 Mr. Clarkson, if you could include any account  
25 associated with the forum that was an H&S

1 account.

2 Q. Is it your understanding that someone  
3 in marketing handled all communications with the  
4 Duramax Forum?

5 A. Yes.

6 Q. Do you have any information to believe  
7 that the information on the Duramax Forum  
8 associated with H&S was instead provided by  
9 someone else not associated with H&S?

10 A. No.

11 Q. So we can turn to the second page of  
12 Exhibit 23. There are two postings by H&S. One  
13 is H&S Tech at the top, and one is H&S  
14 Performance. And on the H&S posting it seems to  
15 be associated with Casey, is that Mr. Shirts?

16 A. That is.

17 Q. Given that there are two separate  
18 posts, does that mean that there are two separate  
19 individuals or departments in the company  
20 associated with this forum?

21 A. The way the forum works, anyone can  
22 log on and create an account. And the Duramax  
23 Forum itself can make that account as a  
24 supporting vendor. So there could be as many  
25 supporting vendor accounts as you want. I

1 believe, it looks on that forum, we have at least  
2 two, plus one more.

3 Q. So you believe the marketing  
4 department would have had one account and maybe  
5 Mr. Shirts had the other?

6 A. I believe on this forum these are the  
7 only two, but I can't be 100 percent sure.

8 Q. Okay. Going to Page 3 of Exhibit 3.  
9 Do you see the post -- excuse me -- by FH Leader  
10 at 10:10 p.m.?

11 A. Yes, I do.

12 Q. Do you know who FH Leader is?

13 A. I do not.

14 Q. Could you read that post to me.

15 A. They say:

16 "Sweet good to see that H&S is now  
17 a vendor here. Now are you guys  
18 going to have PDI register too?"

19 Q. To your knowledge, why would this post  
20 reference both H&S and PDI at the same time?

21 A. To my knowledge, because we're in the  
22 same town and we know each other.

23 Q. But you have testified earlier that  
24 the affiliation between H&S and PDI is a matter  
25 of providing your products to them. Was there



1 other communications between PDI and H&S?

2 A. No.

3 Q. To your knowledge, is the Duramax  
4 Forum run by General Motors?

5 A. No.

6 Q. Do you know who it's run by?

7 A. At the time we signed up with them I  
8 believe it was a company called Auto Forums.  
9 They own multiple forums all over the Internet.

10 Q. Turning to Exhibit 22. Do you  
11 recognize this exhibit?

12 A. It looks like another posting from  
13 Duramax Forum.

14 Q. And is it a posting on the H&S  
15 Performance portion of the Duramax Forum?

16 A. It is not.

17 Q. Do you know what topic is identified  
18 for this?

19 A. The topic that a user created is "What  
20 level do you run on your H&S?"

21 Q. Okay. Do you know who R Stone is who  
22 is posting in the middle of Exhibit 22?

23 A. I do not.

24 Q. Is he asking about the settings for an  
25 H&S tuner?

1 A. He is.

2 Q. When was this posted?

3 A. R Stone posted the original post on  
4 December 23rd of 2011.

5 Q. Do you know what tuner he is  
6 referencing?

7 A. According his signature, he owns a  
8 2011 GMC with an XRT-Pro.

9 Q. When he says:  
10 "I have been running mine on the  
11 wild tune but it seems like it  
12 gets better mileage on the hot  
13 tune."

14 Can you explain that in laymen's  
15 language?

16 A. "Wild" and "hot" are power levels we  
17 offer.

18 Q. Why would he choose one over the  
19 other?

20 A. Depending on your personal preference  
21 of what power you want your vehicle to perform  
22 at.

23 Q. So which one, the wild or the hot gets  
24 better power?

25 A. Hot is a higher horsepower level.

1 Q. Down to B Hinson posted December 24th,  
2 2011, 5:08 a.m. Do you know B Hinson?

3 A. I don't.

4 Q. Do you know what tuner that he's  
5 representing that he's using when he's using the  
6 words "wild"?

7 A. I don't know what tuner.

8 Q. So the wild and hot settings could be  
9 any of your tuners?

10 A. Yes, could be. They all have the same  
11 horsepower names.

12 Q. Okay. How does he appear to be using  
13 his tuner?

14 A. He claims that he's pulling a boat.

15 Q. On a 1200-mile round trip?

16 A. Yes.

17 Q. Moving on to the next page there's a  
18 post by SS Hauler on January 1st, 2012, 3:07 p.m.  
19 Do you know SS Hauler?

20 A. No.

21 Q. Can you tell from his post what device  
22 he's using?

23 A. H&S Mini Maxx.

24 Q. And what is his comment?

25 A. He says, "I run mine on wild 24/7."

1 Q. Do you know what that means?

2 A. To me it says he's running a wild  
3 power level.

4 Q. At all times?

5 A. Yes.

6 Q. And when he's using the wild power  
7 level, is his emission control equipment at the  
8 OEM settings?

9 A. It could be very well (sic). A power  
10 level does not define whether the emission  
11 equipment is present or not.

12 Q. Moving on to the next post, bcruse84  
13 who posted on January 24, 2012, at 12:44 a.m. Do  
14 you know bcruse84?

15 A. I don't.

16 Q. Can you tell from his post what device  
17 he's using?

18 A. I don't see where he says any device.

19 Q. But he just uses the word "H&S"?

20 A. H&S. So obviously, yeah, an H&S  
21 device.

22 Q. He's saying "Run wild" in his first  
23 portion of his statement?

24 A. Uh-huh.

25 Q. So does that mean it could be the

1 XRT-Pro, the Black Maxx, or the Mini Maxx?

2 A. Correct.

3 Q. And he's had his H&S tuner for almost  
4 50,000 miles and tried everything to improve  
5 miles per gallon.

6 Can you tell from this post whether  
7 he's changed his pollution control technologies  
8 from the OEM?

9 A. I cannot.

10 Q. To your knowledge, is this exhibit,  
11 Exhibit 23, a complete and accurate  
12 representation of the Duramax Forum discussion on  
13 the use of the H&S level on 12-23 of 2011?

14 A. Yes.

15 Q. We're going to move away from the  
16 Duramax Forum on to testimonials. We're up to  
17 Exhibit 24. I'd like to mark this as Exhibit 24.  
18 (Exhibits 24-26 were marked for identification.)

19 Q. BY MS. CABALLERO: I'm handing you  
20 Exhibit 25 and 26.

21 So in Exhibit 24, do you recognize  
22 this exhibit?

23 A. I do not, but it looks to be,  
24 according to just the logo at the top and the  
25 name, looks like an H&S Performance forum -- or

1 Facebook post.

2 Q. Can you read the first paragraph of --  
3 actually, first and second paragraphs of  
4 Exhibit 24.

5 A. It says:

6 "Hey, this is Skyler with H&S and  
7 I'm looking for a little help. We  
8 need some good testimonials about  
9 our XRT-Pro. If you're a fan of  
10 the XRT, I'd like to hear about  
11 it! Please leave a comment in the  
12 thread below if you've had a great  
13 experience with any one of the  
14 following topics:  
15 "Power, Fuel Efficiency, Towing,  
16 Ease of Installation, H&S Support  
17 Team or any other reason you've  
18 loved the XRT-Pro."

19 Q. Thank you.

20 So you've never seen this  
21 exhibit before?

22 A. I have not until today.

23 Q. Do you know who drafted the language  
24 for this testimonial?

25 A. It looks to be Skyler would have

1 drafted that.

2 Q. Do you know who Skyler is?

3 A. I do.

4 Q. Who is Skyler?

5 A. Skyler's a member of the marketing  
6 team we hired to run some of the H&S Performance  
7 marketing.

8 Q. What is Skyler's last name?

9 A. Topham.

10 Q. How do you spell that?

11 A. T-O-P-H-A-M.

12 Q. Does Skyler still work for H&S?

13 A. Skyler's never worked for H&S.

14 Q. Who did Skyler work for?

15 A. Skyler worked for a marketing team.  
16 I'm not entirely sure of their name.

17 Q. And it was a marketing team hired by  
18 H&S?

19 A. It is.

20 Q. So do you know why Skyler represented  
21 himself as Skyler with H&S?

22 A. Because he worked for our products and  
23 he was marketing our product for us.

24 Q. Did you have an agreement with his  
25 marketing team?

1 A. I'm sure.

2 Q. Did you pay Skyler to work on H&S  
3 marketing?

4 A. We paid the company Skyler worked for,  
5 yes.

6 Q. And you don't recall the name of the  
7 company?

8 A. I don't.

9 Q. Do you think you have a written record  
10 of that communication?

11 A. I'm sure Casey will know that, yes.

12 MS. CABALLERO: I'd like to make a  
13 request on the record for Skyler Topham's  
14 marketing team name.

15 MR. CLARKSON: You're looking for the  
16 company name?

17 MS. CABALLERO: Company name and the  
18 contract with them.

19 Q. Do you know when this was posted?

20 A. 23 hours ago. No, I do not know when  
21 it was posted.

22 Q. You think Mr. Shirts will know when it  
23 was posted?

24 A. I'm sure it can be information that  
25 can be pulled up, because you can go on Facebook



1 and look at old posts. But I don't think he'll  
2 know off the top of his head, no.

3 Q. Do you know who worked with Skyler to  
4 direct him as to the content of his posts?

5 A. The company he was working for. Casey  
6 was running -- probably giving them an idea of  
7 what he wanted.

8 Q. Okay. So the direction for this came  
9 from Mr. Shirts?

10 A. Likely, yes.

11 Q. And you did not give Skyler direction?

12 A. Correct.

13 Q. And you didn't give his marketing  
14 company direction?

15 A. Correct.

16 Q. I've introduced Exhibit 25 and Exhibit  
17 26, which I believe, based on the information in  
18 Exhibit 24, are responses to Skyler's request for  
19 testimonials. And Exhibit 25 is by -- posted by  
20 Vladimir Bortchevsky. Do you know who Vladimir  
21 Bortchevsky is?

22 A. I don't.

23 Q. And Exhibit 26 is a post by Jason  
24 Allison and Kory Davenport. Do you know either  
25 of those two individuals?

1 A. I do not.

2 Q. Do you have any familiarity whatsoever  
3 with the testimonials run by the marketing  
4 department?

5 A. No.

6 Q. So I'm going to table the discussion  
7 of this and bring it up with Mr. Shirts tomorrow.

8 I'm going to mark as Exhibits 27, 28,  
9 and 29...

10 (Exhibits 27-29 were marked for identification.)

11 Q. BY MS. CABALLERO: Turning to  
12 Exhibit 27. Do you recognize this exhibit?

13 A. It looks to be a posting from a  
14 magazine called 8-Lug HD Truck.

15 Q. Are you referenced in this Exhibit 27?

16 A. Yep.

17 Q. Did 8-Lug contact you for this  
18 article?

19 A. I believe so, yes.

20 Q. Do you know how they got your name?

21 A. I don't.

22 Q. And this appears to be, in Exhibit 27,  
23 a July 2011 issue of the magazine 8-Lug; is that  
24 correct?

25 A. Correct.

1 Q. Okay. I believe your truck is  
2 profiled in this article?

3 A. It is.

4 Q. And turning to Exhibits 28 and 29.  
5 What is Exhibit 28? Do you recognize it?

6 A. Exhibit 28 is the back of the truck.

7 Q. And Exhibit 29?

8 A. It looks like the interior.

9 Q. Okay. What type of truck is  
10 identified in Exhibit 28?

11 A. Ford Super Duty.

12 Q. Do you know what year this truck is?

13 A. 2011.

14 Q. Do you know what model?

15 A. Ford F-250.

16 Q. And the license plate identified in  
17 Exhibit 28 is Z32 3Xv. Do you know who that  
18 license plate is registered to?

19 A. Myself.

20 Q. Was this your personal vehicle?

21 A. It is.

22 Q. This vehicle is not owned by H&S  
23 Performance?

24 A. It may or may not be, I'm not sure.

25 Q. But it is registered, in your

1 understanding, to you?

2 A. Yes.

3 Q. It's a licensed motor vehicle?

4 A. Yes.

5 Q. Turning to Exhibit 29. Can you

6 describe what you see in this exhibit.

7 A. It's an exhibit of -- looks like a

8 photo of the H&S Mini Maxx.

9 Q. How can you tell that's the Mini Maxx?

10 A. Because it's my product and it doesn't  
11 say Bully Dog on it.

12 Q. What is the engine displacement of  
13 this truck, if you know?

14 A. 6.7 liters.

15 Q. Do you use this truck on the highway?

16 A. I do.

17 Q. Do you use this truck on the highway  
18 today?

19 A. I don't.

20 Q. At the time that this article was  
21 written, did you use this truck on the highway?

22 A. I did.

23 Q. Can you read for me the highlighted  
24 portion of the article, fourth paragraph down  
25 beginning "This '11 Ford"?

1           A.        "This '11 Ford is Bentley's daily  
2                    driver, and he -- like the rest of  
3                    us HD truck fans -- cannot leave  
4                    the vehicle in stock form."

5           Q.        What does it mean to be your daily  
6 driver?

7           A.        I drive it every day.

8           Q.        On the highway?

9           A.        Correct.

10          Q.        And other public roads?

11          A.        Yes.

12          Q.        To your knowledge, for Exhibits 27,  
13 28, and 29, are they complete and accurate  
14 representations of this magazine article?

15          A.        Yes.

16          Q.        For the truck profiled in this  
17 article, has the pollution control technologies  
18 been altered from the OEM?

19          A.        It has come on and off the truck  
20 multiple times, yes, for testing.

21          Q.        And can you describe what alterations  
22 have been made to the OEM for pollution purposes.

23          A.        During product testing, of course if  
24 we're selling a device that removes emissions  
25 equipment, we must remove that emission equipment

1 from our test vehicle.

2 The same goes for building a product  
3 for emissions present vehicles. We have to put  
4 the emissions system back on the vehicle for  
5 testing. So it's coming on and off the vehicle  
6 numerous times.

7 Q. And can you be specific which aspects  
8 of the pollution control technology in the  
9 vehicle were removed?

10 A. Anything from EGR, DPF, DOC, SCR.

11 Q. Do you know why the reporter contacted  
12 you?

13 A. I don't. I can likely assume because  
14 it's a nice vehicle and he wanted to do a shoot  
15 on it. That's why they usually do magazine ads.

16 Q. Do you know where this magazine  
17 publishes out of?

18 A. I don't. I do know it was a privately  
19 subcontracted. The guy that came and shot the  
20 truck didn't work for HD -- or 8-LUG Truck. It  
21 was just a private.

22 Q. Do you mean this individual was like a  
23 freelance?

24 A. Most -- sorry, yeah, freelance.

25 Q. Freelance journalist?

1 A. Yes.

2 Q. Okay. Did you ever drive on road with  
3 this vehicle with the emission control removed?

4 A. Yes.

5 Q. I'm going to turn to other marketing  
6 from H&S. This will be Exhibits 30 and 31.

7 (Exhibits 30-31 were marked for identification.)

8 Q. BY MS. CABALLERO: Do you recognize  
9 Exhibit 30?

10 A. It looks like something a marketing  
11 team would have put together for advertisement,  
12 yes.

13 Q. Is that the same for Exhibit 31?  
14 Something the marketing team would have put  
15 together for advertising?

16 A. Exactly.

17 Q. Do you know why this ad would have  
18 been placed?

19 A. Not specifically, no.

20 Q. How about Exhibit 31?

21 A. I don't off the top of my head.

22 Q. Were these pretty standard for  
23 advertisements created by H&S for marketing the  
24 devices?

25 A. Yes.

1 Q. Around what time frame, do you know?

2 A. The entire time the company's been  
3 open.

4 Q. Okay. Turning to Exhibit 30, it  
5 states, "The world's most advanced tuners," and  
6 underneath it has some truck names and models.  
7 Can you describe what each one of those  
8 statements means.

9 A. Ford 6.4 liter means a 2008 to 2010  
10 6.4 liter Power Stroke. Dodge 6.7 liter could  
11 encompass anywhere from a Dodge 2007 to 2012.  
12 And an LMM Duramax was used in 2008 to 2010 on  
13 the GM.

14 Q. Okay. And then directly under that  
15 "Black Maxx Race Tuner," and it's for  
16 applications. Can you describe what applications  
17 those would be.

18 A. Listed there it says 2007 and a half  
19 to 2010 6.7 liter, 2007 to 2010 LMM, and 2008 to  
20 2010 6.4 liter.

21 Q. And as designed for this ad it says  
22 explicitly next to the Black Maxx Race Tuner,  
23 "Turns off DPF and EGR systems"?

24 A. That is an option of the device, yes.

25 Q. Moving down to the Mini Maxx. What



1 applications are identified in this advertisement  
2 for the Mini Maxx?

3 A. 2007 and a half to 2010 6.7 liter,  
4 2007 to 2010 LMM, 2008 to 2010 6.4 liter.

5 Q. And the Mini Maxx, as identified in  
6 the ad, also turns off the DPF and EGR systems?

7 A. Yes. That is one option of that  
8 device.

9 Q. Moving on to the XRT Race Tuner  
10 directly below the Mini Maxx Race Tuner. What  
11 are the applications for the XRT Race Tuner?

12 A. 2007 and a half to 2009 6.7 liter,  
13 2007 to 2010 LMM, 2008 to 2010 6.4 liter.

14 Q. And this device also turns off the DPF  
15 and EGR systems?

16 A. It does have that capability, yes.

17 Q. And looking at the left of this  
18 advertisement, it says tunes are available for  
19 factory emissions equipment or DPF/EGR removal.  
20 Can you describe the difference between those  
21 two?

22 A. All of our devices we've ever  
23 manufactured give you the option of leaving the  
24 emissions equipment present on the vehicle or  
25 removing it.

1 Q. Turning back to Exhibit 30. In the  
2 emission present mode for any of these three  
3 devices, would the tuners still alter the engine  
4 parameters?

5 A. Yes.

6 Q. How?

7 A. To increase performance or economy or  
8 anything, you will have to modify fueling  
9 characteristics, torque, tables, things like  
10 that.

11 Q. Okay. So they would affect the  
12 fueling --

13 A. For sure.

14 Q. -- of the timing of the engine?

15 A. Correct.

16 Q. And what about the quantity of  
17 fueling? Would it affect the quantity of the  
18 fueling?

19 A. Yes.

20 Q. Turning to Exhibit 31. Is this an ad  
21 that H&S would have used to promote their  
22 devices?

23 A. Yes.

24 Q. Do you recognize this ad?

25 A. It looks familiar, yes.

1 Q. And in this ad your XRT, Black Maxx,  
2 and Mini Maxx devices are being promoted?

3 A. Correct.

4 Q. And there's also a reference to that  
5 these devices are available for DPF/EGR removal?

6 A. Yes.

7 Q. So regarding Exhibit 31, is this an  
8 accurate and complete representation of an H&S ad  
9 for these devices?

10 A. Correct.

11 Q. And regarding Exhibit 30, is this an  
12 accurate and complete representation of an H&S ad  
13 for these three different devices?

14 A. Yes.

15 Q. Turning back to Exhibit 30.

16 MR. CLARKSON: Before we move on, do  
17 you have a copy of 31 where you can actually read  
18 the text at the bottom?

19 MS. CABALLERO: I don't. Sorry.

20 THE WITNESS: I can get that to you,  
21 if you'd like.

22 Q. BY MS. CABALLERO: Turning back to  
23 Exhibit 30. On the left-hand side of the page  
24 under the words "Bring on the Power," it says  
25 "Increases up to 275 horsepower," and then "639

1 TQ." Can you describe each of those statements.

2 A. Horsepower -- 275 horsepower would be  
3 the horsepower rating. And where are you seeing  
4 the TQ?

5 Q. (Indicating.)

6 A. Oh, up there. 639 TQ is a torque  
7 rating. It's a measure of the torque on the  
8 engine.

9 Q. We only have a little bit more before  
10 the lunch break.

11 A. That's fine.

12 Q. Given the Facebook exhibits, the  
13 YouTube exhibits, the H&S Performance website,  
14 and the online forum advertising and  
15 testimonials, are you aware that your products  
16 have been used for on-road activities?

17 A. They're used all over the world on the  
18 road, yes.

19 Q. Including the United States?

20 A. I'm not aware of anyone specific in  
21 the U.S., but yes, I can assume that they may be  
22 used in the U.S.

23 Q. Didn't you yourself use the product in  
24 the United States with the emission control  
25 removed?

1           A.           For testing purposes, yes.

2           Q.           In Exhibit 27 it identifies that this  
3 '11 Ford is your daily driver. When it was your  
4 daily driver, did you use it with the emission  
5 control removed?

6           A.           Depending what I was testing at that  
7 point.

8           Q.           Is it your understanding there's an  
9 exception for testing in the regulations or  
10 statutes?

11          A.           There is. I know that now.

12          Q.           If you contend that many of these  
13 devices are used for racing purposes, why are you  
14 marketing to such a large audience?

15          A.           Explain the question.

16          Q.           We understand from information that  
17 has been provided to us by H&S for the last few  
18 years that H&S believes that these devices can be  
19 used for competition purposes.

20          A.           Correct.

21          Q.           Without opining on EPA's belief on  
22 that statement, if you believe that these devices  
23 are primarily to be used for racing purposes, why  
24 has your marketing been to such a large swath of  
25 customers?

1           A.       These magazines go worldwide. We  
2   literally sell thousands upon thousands of  
3   devices, Canada, Brazil, Europe, many places  
4   around the world that these magazines also travel  
5   to.

6                    So, I mean, it's a generic marketing  
7   ploy by our guys to gain more sales.

8           Q.       Thank you, Mr. Hugie.

9                    MS. CABALLERO: Off the record.

10                   (The lunch break was taken from  
11                    11:53 a.m. until 12:57 p.m.)

12                   MS. CABALLERO: Back on the record.

13                   I hope you had a nice lunch.

14                   MR. CLARKSON: Quick.

15                   MS. CABALLERO: Great. We had a few  
16   clean-up questions from this morning before we  
17   turn to this afternoon's topics.

18           Q.       Earlier this morning we were  
19   discussing your business location, the type of  
20   work that was done at your business, and you  
21   mentioned that you may have consulted with  
22   someone from Ford Motors on an ECM?

23           A.       We have contacts that are related to  
24   the OEM manufacturers that have either previously  
25   worked there or have friends that work there can

1 get us information on things like updated  
2 releases. Like if Ford fixes something on their  
3 vehicle and we need to fix the same thing in our  
4 tuning files, we may get information about that  
5 from them.

6 Q. So this individual that you had  
7 mentioned is not directly currently, or at the  
8 time you spoke with them, employed by Ford Motor  
9 Company?

10 A. No.

11 Q. This is possibly a prior employee?

12 A. Yeah, exactly.

13 Q. And do you know who that individual  
14 is?

15 A. I don't know their names off the top  
16 of my head, but I could for sure get it.

17 MS. CABALLERO: I'd like to make a  
18 request on the record for the identification of  
19 the individuals who had formerly worked for Ford  
20 who have been in contact with Mr. Hugie about the  
21 ECM.

22 Q. And are there other individuals at --

23 A. We do have a contact for Chrysler as  
24 well. No General Motors contact.

25 MS. CABALLERO: And the contact at

1 Chrysler who had contact with H&S -- anyone at  
2 H&S about the ECM.

3 Q. You had also testified that there were  
4 a number of trucks used to develop the various  
5 devices, and very few of them are still owned by  
6 H&S and you had sold them to others; is that  
7 correct?

8 A. Correct.

9 MS. CABALLERO: And I think I have a  
10 request on the record for who they were sold to.

11 MR. CLARKSON: Yes.

12 Q. BY MS. CABALLERO: When those vehicles  
13 were sold, did they have the original equipment  
14 manufacturer's emission controls? Or were those  
15 controls removed?

16 A. It would probably be vehicle  
17 dependent. I could for sure look it up. I'm not  
18 sure on every vehicle.

19 Q. Would it be on the record of sale?

20 A. It should be, yeah. We should have  
21 that information.

22 MS. CABALLERO: I think we've already  
23 asked for the records of sale. If there are  
24 additional materials that identify whether the  
25 truck had the emission control equipment removed



1 or altered, we would request that information as  
2 well.

3 Q. And then lastly, I think right before  
4 we broke for lunch there was a question of  
5 testing various trucks with the emission control  
6 equipment disabled or removed.

7 When those trucks were tested, were  
8 those emissions from the trucks treated prior to  
9 release to the atmosphere? So if that --

10 A. Okay. I think --

11 Q. Can you answer that question?

12 A. No, they were not.

13 Q. No, they were not. Okay.

14 So, for example, in one of the  
15 exhibits -- I think it was Exhibit 9 -- we  
16 watched a YouTube video of a truck where the  
17 emissions in the tailpipe, which were black  
18 smoke, were clearly being emitted to the  
19 environment. That clearly was not treated prior  
20 to release --

21 A. Correct.

22 Q. -- to the environment.

23 Going to introduce Exhibit 32, 33, and  
24 34.

25 (Exhibits 32-34 were marked for identification.)

1 Q. BY MS. CABALLERO: Turning to  
2 Exhibit 32. Do you recognize this exhibit?

3 A. I do.

4 Q. And what is it?

5 A. This is a request for information from  
6 the EPA to H&S Performance.

7 Q. Dated March 14, 2013?

8 A. Correct.

9 Q. And turning to Exhibits 33 and -4,  
10 were those the responses or a portion of the  
11 responses from H&S to EPA?

12 A. It does look to be so.

13 Q. Okay. I'm going to be getting to  
14 those in just a minute.

15 I think you've testified earlier that  
16 the devices, such as the XRT-Pro, the Black Maxx,  
17 and the Mini Maxx, are not manufactured at your  
18 warehouse location or your building location in  
19 St. George?

20 A. Correct.

21 Q. They're manufactured at Bully Dog in  
22 Idaho?

23 A. That's the owner of the manufacturing,  
24 correct. I don't know exactly where they are  
25 made.

1           Q.       In Exhibit 33 there are some dealer  
2 hardware referenced, and I'm going to turn to --  
3 okay. I'm going to turn to answer 1n, as in  
4 Nancy, little Roman iii, "Dealer level tools" on  
5 the third page. Do you see that?

6           A.       Uh-huh.

7           Q.       And it says in this response that:  
8                    "H&S utilizes many dealer level  
9 pieces or hardware that are  
10 utilized in the design and  
11 engineering phases."

12                   And identifies some tools.

13                   Can you explain what TechII is?

14           A.       TechII is a tool made for General  
15 Motors for diagnostics and programming protocol  
16 at a dealer level. "A dealer level" being a GM  
17 dealer.

18           Q.       H&S has a copy of TechII?

19           A.       TechII can be purchased by anyone.

20           Q.       So it's not limited to the GM dealers?

21           A.       No.

22           Q.       You've also identified "Star Mobile."  
23 What is Star Mobile?

24           A.       Star Mobile is a device used by  
25 Chrysler, same base device for programming,

1 diagnostics, data logging.

2 Q. Can anyone purchase a Star Mobile, to  
3 your knowledge?

4 A. Yes.

5 Q. And so H&S purchased a Star Mobile?

6 A. Yes.

7 Q. It's not limited to the Chrysler  
8 dealers?

9 A. Correct.

10 Q. Next is WiTech?

11 A. WiTech is another Chrysler device.

12 Q. Okay. And how did H&S obtain WiTech?

13 A. We have actually never purchased one.  
14 We borrowed one for use in developing some of our  
15 products, but we've never owned one.

16 Q. Who did you borrow it from?

17 A. A couple of people. One of which  
18 would be Performance Diesel Incorporated.

19 Q. That's Mr. Wittwer's company?

20 A. It is.

21 Q. And why have you not purchased your  
22 own?

23 A. We only needed it for a short period  
24 of time.

25 Q. Do you know when you borrowed that

1 from PDI?

2 A. Maybe two years ago.

3 Q. 2013?

4 A. Sure.

5 Q. Do any of your employees also work for  
6 PDI as well as H&S?

7 A. No.

8 Q. So how does that work with PDI? You  
9 call Mr. Wittwer, or one of his employees, and  
10 ask for their device?

11 A. Sure.

12 Q. Moving on to IDS. Did IDS stand for  
13 something?

14 A. It does, but I'm not sure of the...

15 Q. And what is IDS?

16 A. It's a Ford tool.

17 Q. Can anyone buy an IDS, to your  
18 knowledge?

19 A. Yes.

20 Q. And H&S purchased an IDS?

21 A. Yes.

22 Q. In response 1n, as in Nancy, little  
23 Roman iv, "Custom hardware. H&S utilizes many  
24 custom hardware pieces..."

25 Can you describe how H&S designs and

1 builds custom hardware pieces.

2           A.           There's many different facets of what  
3 we do. If you want to say -- say we're using a  
4 dealer tool and we want to see how that dealer is  
5 communicating with the ECM, we have to install a  
6 device in line with that dealer tool to watch and  
7 manipulate what they're doing so we can learn  
8 from it.

9                       So some of these devices would be a  
10 simple little box you call a breakout box. You  
11 can plug in different transmission lines that are  
12 being watched by a computer to learn what the  
13 factory OEM is doing on these vehicles.

14           Q.           So would you use the breakout box?  
15 Would that be your design?

16           A.           Yeah. They can also be purchased  
17 online. They're a very common tool in the  
18 automotive aftermarket.

19           Q.           Is there another tool like a breakout  
20 box? Similar tool?

21           A.           They're all going to be along those  
22 same things. Some of them are called snoop  
23 tools.

24           Q.           Where can you purchase these hardware?

25           A.           Anywhere online.

1 Q. As an example?

2 A. I don't even know any websites off the  
3 top of my head. I can just go Google search one  
4 and you can probably pull up hundreds.

5 Q. Okay. You've also described products  
6 like NeoVi Fire?

7 A. NeoVi Fire is a snoop tool. It's a  
8 specific brand name of one that would be used for  
9 snooping.

10 Q. So can you describe how NeoVi Fire  
11 would work.

12 A. In the application we use it for, when  
13 you hook up with a dealer tool as specified  
14 before, like a TechII, it's going to send in  
15 signals to the -- to the computers, you see them.  
16 What the NeoVi Fire does is it allows us to see  
17 what signals are going in and what's being  
18 received back from the computer.

19 Q. Can you describe the CAN Bus  
20 diagnostics equipment.

21 A. Same -- essentially the same thing.  
22 Equipment that watches what's going on the CAN  
23 Bus. You can also add in there maybe  
24 oscilloscope, you can watch how data's being  
25 transferred through an oscilloscope.

1 Q. So you would describe the NeoVi Fire  
2 and the CAN Bus diagnostics as interchangeable?

3 A. Yes.

4 Q. So since 2010, who has supplied  
5 equipment to you that you use in your devices, to  
6 the extent that you can recall? I think in this  
7 response it's sort of a general statement  
8 regarding suppliers. I think it's at the bottom  
9 of Page 3:

10 "Hundreds of pieces of computer  
11 hardware are involved in making  
12 one Street Device."

13 But I think we're more interested in  
14 just some of the suppliers. Can you describe  
15 some?

16 A. In that response a supplier was  
17 referenced as being I need a electronic  
18 connector, and go online and buy -- there could  
19 be hundreds of suppliers.

20 There's nothing really specific as far  
21 as we got this from so-and-so. It's just, you  
22 know, anything you can buy readily online,  
23 there's nothing very specific there.

24 Q. Would you consider Bully Dog a  
25 supplier?



1 A. As far as in that response?

2 Q. I don't mean to hold you to this.

3 Just in general, you have explained a business  
4 relationship with them and they are shipping to  
5 you partially completed devices that you then  
6 finalize and offer for sale. Would you consider  
7 them as a supplier to you?

8 A. On that aspect they are our biggest  
9 supplier.

10 Q. Are there other companies that perform  
11 the same role for you as Bully Dog?

12 A. As far as a tuning device?

13 Q. Right.

14 A. No.

15 Q. Moving on to Exhibit 34. And I  
16 believe this is general explanation of  
17 calibration changes in relationship to a  
18 Cummins -- Cummins engine.

19 Are your devices calibrated for use on  
20 specific motors?

21 A. Yes.

22 Q. And Exhibit 34 is for a particular  
23 motor? A particular engine?

24 A. Yes, it is. It looks like it's a 2010  
25 to 2012 6.7 liter Cummins.

1 Q. So what types of calibration would be  
2 undertaken for this type of engine?

3 A. To gain what result?

4 Q. Any -- any. You've made alterations  
5 to the OEM, and these are the types of  
6 alterations you've made, correct?

7 A. Correct.

8 Q. So what is the purpose of the  
9 injection duration alteration?

10 A. Increase horsepower.

11 Q. What about the injection timing?

12 A. Increased horsepower and efficiency.

13 Q. What is the purpose of the diagnostics  
14 manipulation?

15 A. Keep check engine lights from  
16 happening if they were to exceed a certain  
17 horsepower level or temperature level.

18 Q. So it would turn off the engines or  
19 prevent the engine lights or prevent them from  
20 even lighting up?

21 A. For certain procedures, yes.

22 Q. What is the purpose of sensor  
23 manipulation?

24 A. The ECM was constantly watching  
25 sensors. We manipulate sensors many times to

1 achieve a different results from the ECM.

2 Say we want to monitor a temperature  
3 sensor that is not designed to be a temperature  
4 sensor from the OEM, and we want to add something  
5 in. So we re-scale how the ECM interprets that  
6 sensor to be interpreted by us differently.

7 Q. Did you say re-scale?

8 A. Yes.

9 Q. Is one of the purposes of sensor  
10 manipulation to change the pollution control  
11 technologies?

12 A. That could be one aspect of it, yes.

13 Q. Who designed these calibrations?

14 A. Originally, the OEM.

15 Q. Who designed the alteration to the  
16 calibrations?

17 A. I did.

18 Q. Did anyone assist you with the  
19 calibration alterations?

20 A. In 2007 and 2008, Casey was also  
21 involved in calibrations. But since then I have  
22 taken over.

23 Q. Were you also working on the  
24 calibrations in 2007 and 2008?

25 A. Yes, we were working jointly.

1 Q. And then after 2008 it was only you?

2 A. Correct.

3 Q. Until you stopped making devices?

4 A. Correct.

5 Q. Which was approximately in 2014?

6 A. Correct.

7 Q. If you know, what is a turbocharger?

8 A. It is a device used on an internal  
9 combustion engine to increase pressure for inlet,  
10 and increase horsepower.

11 Q. What is a turbocharger boost?

12 A. It's the amount of pressure the  
13 turbocharger makes.

14 Q. What is a high sulfur calibration?

15 A. High sulfur calibration is a term we  
16 came up with to define a calibration that allows  
17 emissions removal.

18 Q. Can you more fully describe the  
19 emissions removal? What types of emissions --  
20 what types of controls are high sulfur  
21 calibrations?

22 A. A high sulfur calibration allows a  
23 customer to use high sulfur fuel, which cannot be  
24 used on any vehicle that contains a DPF, EGR, or  
25 SCR system. So those emission devices would be

1 removed so that customer could then use high  
2 sulfur fuel.

3 Q. Can you define high sulfur in the  
4 fuel?

5 A. High sulfur fuel is a fuel that  
6 contains a content of more sulfur particles,  
7 which is -- many third-world countries or parts  
8 of the world, that's all they have. They don't  
9 have ultralow sulfur diesel fuel.

10 Q. Is it higher than 15 points per  
11 million?

12 A. It is.

13 Q. And you have offered -- H&S has  
14 offered a high sulfur calibration?

15 A. To customers that apply for it, yes.

16 Q. When you say "to customers that apply  
17 for it," how are they aware of the high sulfur  
18 calibration product?

19 A. Customers?

20 Q. Yes.

21 A. They likely Google search and find our  
22 product and know that we offer it.

23 Q. Is it on your website?

24 A. Not currently, no.

25 Q. Was it on your website at the time?

1           A.       At the point we were selling them,  
2   yes.

3           Q.       And when was that, approximately?

4           A.       High sulfur was developed  
5   approximately 2012 and used for approximately a  
6   year until we stopped making devices.

7           Q.       So in what device was the high sulfur  
8   calibration offered?

9           A.       The Mini Maxx and the XRT-Pro.

10          Q.       And was it offered in all Mini Maxxes  
11   and XRT-Pros?

12          A.       Yes.

13          Q.       How did the customer access the high  
14   sulfur calibration on those two devices?

15          A.       A customer desiring a high sulfur  
16   calibration would have to apply with H&S  
17   Performance on our website. That application was  
18   received and gone through and decided if they are  
19   legal to use that high sulfur calibration or not.  
20   And then the customer was given a code to unlock  
21   that feature on the device.

22          Q.       How did H&S determine whether the  
23   customer was eligible for the code?

24          A.       Number 1 is outside of the United  
25   States. If they were inside the United States,

1 we would require EPA exemption. We required VIN  
2 numbers, registration information, photos of the  
3 vehicle, and description of general use, what the  
4 vehicle was going to be used for.

5 Q. For the product sold inside the United  
6 States, did you keep files with this information?

7 A. Oh, yes.

8 Q. Did you provide those files to us  
9 previously?

10 MR. CLARKSON: I don't think it was  
11 included in the request.

12 MS. CABALLERO: I'd like to make a  
13 request on the record for the high sulfur  
14 calibration sold within the United States, all  
15 records associated with that.

16 Q. Once you had received the information  
17 for the vehicles located inside the United  
18 States, did you then provide an unlock code to  
19 the customer?

20 A. Yes. And on that same note, I guess  
21 I'll say I don't know that there are any that  
22 were even approved in the United States, because  
23 I don't think the EPA ever told anyone yes or no.

24 So every high sulfur device we would  
25 have sold would have likely been outside the U.S.

1 Q. But to the extent that you have  
2 provided them to customers inside the United  
3 States, it's your understanding that you retained  
4 or --

5 A. For sure.

6 Q. -- asked for records with the  
7 information on the VIN code --

8 A. Correct.

9 Q. -- photos. Okay. And registration.  
10 MS. CABALLERO: So again, any  
11 information you have to that end we would like  
12 produced. Thank you.

13 Q. Were unlock codes ever provided to  
14 dealers?

15 A. Describe "unlock codes."

16 Q. The code that is used to utilize the  
17 high sulfur calibration in the Mini Maxx or the  
18 XRT-Pro.

19 A. So a high sulfur unlock code. Yes, if  
20 that dealer applied for it and was approved on  
21 that application, he would get a code.

22 Q. When the dealer would apply for the  
23 code, was it for a fleet of vehicles or  
24 individual vehicle?

25 A. Depends on the dealer and the



1 application. We've had both.

2 Q. Do you have information about the  
3 dealers that would have received these codes? I  
4 think it would be within the --

5 A. Yeah, should be.

6 Q. -- the prior request?

7 A. Yep.

8 Q. Okay. I'm going to turn to any  
9 international work that H&S is engaged in.

10 Is H&S engaged in business in Canada?

11 A. No.

12 Q. Is H&S engaged in business in any  
13 other country?

14 A. No.

15 Q. Is any legal entity associated with  
16 H&S doing business in any other country?

17 A. No.

18 Q. Is H&S importing goods to the United  
19 States?

20 A. No.

21 MS. CABALLERO: I'd like to mark this  
22 as Exhibit 35.

23 (Exhibit 35 was marked for identification.)

24 Q. BY MS. CABALLERO: Mr. Hugie, have you  
25 ever seen this form before?

1           A.        I have not.

2           Q.        Okay. This is a Customs and Border  
3 Protection form, Form 7501. And I'll represent  
4 that it's typically used when goods are imported  
5 to the United States. And each one of these  
6 boxes on this form has a specific information  
7 requirement.

8                    You've never seen this form before?

9           A.        I have not.

10          Q.        And you've -- you're not aware that  
11 anyone at H&S has ever participated in filling  
12 out a form like this for any H&S product?

13          A.        To my knowledge, no.

14          Q.        Or for any other product somehow  
15 associated with H&S?

16          A.        To my knowledge, no.

17          Q.        Okay. We've got some corporate  
18 structure questions.

19                    What legal form is H&S Performance?

20          A.        As far as what -- you mean, like, an  
21 S-corporation?

22          Q.        Yes.

23          A.        I believe we are an LLC filing as an  
24 S-corp. That's all I know about it.

25          Q.        So the name of the company for tax

1 purposes is what?

2 A. H&S Performance, LLC, I believe.

3 Q. Do you know what form you file with  
4 the IRS?

5 A. I don't.

6 Q. Might you file a 965 for a  
7 partnership? Or an 1120 as a corporate tax  
8 return?

9 A. I couldn't tell you.

10 Q. Do you know who would have this  
11 information at H&S?

12 A. My accountant.

13 Q. And who is that?

14 A. A combination of Lori Anderson and  
15 Kurt Nielsen.

16 Q. You've mentioned several times that  
17 people with the last name of Anderson are  
18 employed by H&S. Are they all related?

19 A. There are two that work for H&S, and  
20 it's a mother and a daughter, yes.

21 Q. Okay. Do you know if H&S pays  
22 estimated taxes?

23 A. We do.

24 Q. So does Ms. Anderson and Mr. Nielsen  
25 file with the IRS on behalf of H&S?

1 A. Yes.

2 Q. Other than H&S Performance, are there  
3 any other legal entities associated with the H&S  
4 business?

5 A. No.

6 Q. Are there any other legal entities  
7 that provide services to the business?

8 A. No.

9 Q. Any consulting services?

10 A. Describe "consulting services."

11 Q. Anyone ever provide you information  
12 for which you pay?

13 A. Those previously we talked about that  
14 would -- we would get some OEM information that  
15 used to work at Ford or GM, we -- I believe we've  
16 paid them on a piece rate basis, so, hey, we need  
17 this this time.

18 Q. But he is not associated with H&S  
19 Performance, LLC, other than you paid this  
20 individual for the information?

21 A. Correct.

22 Q. Okay. Does anyone provide management  
23 services to H&S Performance?

24 A. Not that I know of, no.

25 Q. Does anyone else provide technical

1 services to H&S Performance, other than you've  
2 previously identified?

3 A. No.

4 Q. What bank account is used by H&S?

5 A. I believe only Wells Fargo is who we  
6 use.

7 Q. To your knowledge, are all such bank  
8 accounts in the United States?

9 A. Yes.

10 Q. To your knowledge, does H&S file in  
11 any foreign jurisdictions?

12 A. No.

13 Q. To your knowledge, has anyone filed an  
14 1120F, as in Frank, with the IRS which is the  
15 form for a foreign corporation doing business in  
16 the United States?

17 A. No.

18 Q. To your knowledge, has anyone  
19 associated with H&S filed a Form 1120F?

20 A. No.

21 Q. Do you own any interest in any legal  
22 entities that have filed an 1120F?

23 A. No.

24 Q. Are you a director for any other  
25 company?

1 A. No -- well -- no, I'm not.

2 Q. Are you a director for any  
3 partnerships?

4 A. No.

5 Q. I'm sorry. Are you involved in any  
6 partnerships?

7 A. I was involved in H&S Motorsports, but  
8 I have since transferred ownership out of that.

9 Q. Who did you transfer that ownership  
10 to?

11 A. Zane Koch.

12 Q. How do you spell Zane's last name?

13 A. K-O-C-H. There are other partners as  
14 well.

15 Is partner only two?

16 MR. CLARKSON: Just answer the best --

17 MS. CABALLERO: There can be multiple  
18 partners in a partnership.

19 THE WITNESS: I transferred my  
20 ownership to Zane, Payton Hugie, and Chandler  
21 Fitzgerald.

22 Q. BY MS. CABALLERO: I don't believe  
23 I've heard Chandler Fitzgerald's name before.  
24 Did he previously work for H&S Performance, LLC?

25 A. He did.

1 Q. And what was his role?

2 A. He was in tech support.

3 Q. Do you know what the function is of  
4 H&S Motorsports?

5 A. They are developing hardware for  
6 vehicles. Aftermarket products.

7 Q. But you have no continuing involvement  
8 with H&S Motorsports at this time?

9 A. Correct.

10 Q. Are you involved with any other  
11 corporate entity?

12 A. No.

13 Q. Any limited liability company?

14 A. No.

15 Q. Any other legal entity?

16 A. No.

17 Q. Do you receive royalties from any  
18 business?

19 A. No.

20 Q. Does H&S receive royalties from any  
21 business?

22 A. No.

23 Q. Do you have any affiliation with other  
24 diesel engine aftermarket manufacturers?

25 A. Describe "affiliation."

1 Q. Any contact that involves profit for  
2 you in your individual capacity.

3 A. No.

4 MS. CABALLERO: Okay. I'm going to  
5 introduce Exhibit 36 and 37.

6 (Exhibits 36-37 were marked for identification.)

7 Q. BY MS. CABALLERO: Are you familiar  
8 with Exhibits 36 and 37?

9 A. Yes.

10 Q. And what are they? Start with 36.

11 A. 36 looks like something we got from  
12 CARB or are dealing with them. I'm not exactly  
13 sure what this was for.

14 Q. Let me represent to you this is your  
15 settlement with the California Air Resources  
16 Board.

17 A. Yep.

18 Q. And do you know what Exhibit 37 is?

19 A. Looks like a complaint from California  
20 Air Resource Board.

21 Q. Yes. So are you familiar with an  
22 action filed by the State of California against  
23 H&S Performance?

24 A. Yes.

25 Q. And do you know the nature of that



1 action?

2 A. They were finding that we were selling  
3 products illegally in California.

4 Q. Did H&S Performance have an exemption  
5 or a certificate -- a certification from CARB,  
6 the California Air Resources Board, to sell  
7 products in California?

8 A. What products?

9 Q. Any of your XRT, Black Maxx, or Mini  
10 Maxx devices.

11 A. No.

12 Q. Did you have an exemption or  
13 certification from CARB to sell any devices in  
14 California?

15 A. Not under the H&S Performance brand  
16 name, but we were selling devices into  
17 California, such as air intake kits, other --  
18 other aftermarket products that were CARB  
19 approved.

20 Q. And what was the name of the  
21 company?

22 A. The CARB approval we were selling was  
23 S&B. They were an air filter kit for a diesel  
24 truck.

25 Q. S-N?

1 A. S&B.

2 Q. S&B is the name of the company?

3 A. Yes.

4 Q. Are you affiliated with that company?

5 A. No.

6 Q. H&S is affiliated with that company?

7 A. We sold their product. They are  
8 another manufacturer.

9 Q. Do you know where S&B is located?

10 A. I do not.

11 Q. They contacted you to sell a product,  
12 correct?

13 A. We likely contacted them, because we  
14 had a demand for a product that we don't  
15 manufacture, so we sold theirs.

16 Q. And it is only their product that had  
17 an exemption or certification from CARB --

18 A. Correct.

19 Q. -- for emission requirement?

20 A. Correct.

21 Q. As a result of the settlement with  
22 CARB, did you need to institute a recall plan?

23 A. We did.

24 Q. And can you tell me what that  
25 involves?

1           A.       I'm not 100 percent sure on all the  
2   ins and outs. That was mostly worked on by  
3   Casey, my partner. But I do know it involved --  
4   we contacted all previous customers we had in  
5   California, sent them all the information they  
6   needed to have to send the product back to us,  
7   and we would purchase it from them.

8           Q.       Do you know approximately how many  
9   devices were recalled?

10          A.       I don't. I know our original --  
11   original information from CARB, our first letter  
12   we got was 280-ish devices, but I don't know what  
13   it showed on our final.

14          Q.       So are you still involved in these  
15   recall activities today?

16          A.       Yes.

17          Q.       As H&S?

18          A.       Yep.

19          Q.       Approximately how many devices do you  
20   receive a week?

21          A.       Zero.

22          Q.       So when I ask you if you're still  
23   involved in the recall activities, in theory, you  
24   will refund a product but you're not receiving  
25   any products?

1 A. Correct. We've yet to receive one.

2 Q. But you already had received about  
3 280?

4 A. That was how many products California  
5 was showing as we sold into California that we  
6 were needing to be fined for. So -- and I  
7 believe our final information was we sent out  
8 probably a thousand e-mails to people to say,  
9 hey, send your product back. But we have yet to  
10 receive one.

11 Q. You received no products from any  
12 customers in California?

13 A. To my knowledge, correct.

14 Q. So after this California matter that  
15 was finalized last year, did your business  
16 activities change? For example, you're no longer  
17 selling products in California?

18 A. After this was finalized?

19 Q. Yes. It was -- the copy of the  
20 settlement was filed with the court on August 6,  
21 2014.

22 A. At this point when this was finalized  
23 we were no longer selling any devices period.

24 Q. So when exactly did you stop selling  
25 any devices?

1           A.       I don't know the specific date. I  
2 would like to say beginning of 2014.

3           Q.       Was a decision made by H&S Performance  
4 to no longer sell the three main devices we  
5 discussed today, the Mini Maxx, the XRT-Pro, and  
6 the Black Maxx?

7           A.       Correct. That decision was made based  
8 off of your testing that you'd done with one of  
9 our products at one of your facilities.

10          Q.       And when you say "your," you mean the  
11 EPA's?

12          A.       Yes. Correct.

13          Q.       So a decision was made in the  
14 beginning of 2014 --

15          A.       Yes.

16          Q.       -- to no longer sell these three  
17 devices.

18                   And you made that decision by  
19 yourself?

20          A.       I'm sure it was jointly between Casey  
21 and I.

22          Q.       And so since 2014, you are no longer  
23 selling any of those three devices?

24          A.       If there would be any, it would be the  
25 high sulfur application devices, which are few

1 and far between. I believe our sales records --  
2 and Casey will know more on this -- might be  
3 20 units a month that will go outside the United  
4 States.

5 Q. At this point with only selling  
6 20 units a month and still having eight  
7 employees, what is your source of income for your  
8 company?

9 A. Previous money we've already made.  
10 We're losing money, at this point very  
11 drastically.

12 Q. Do you know how much money you're  
13 losing on a monthly basis?

14 A. I couldn't tell you. I'm outside of  
15 the accounting. I don't know.

16 Q. Who's in charge of accounting?

17 A. Casey, Lori, and Amberly.

18 Q. Who's Amberly?

19 A. Amberly is Lori's daughter, the other  
20 Anderson.

21 MS. CABALLERO: Let's go off the  
22 record.

23 (There was a break taken.)

24 MS. CABALLERO: Back on the record.

25 We just have a few more questions and

1 then we'll be completed with this process.

2 THE WITNESS: On the lines of the  
3 sales you were asking about, can I clarify  
4 there?

5 Q. BY MS. CABALLERO: Please.

6 A. Were you asking about sales into  
7 California when did we stop? Or just general  
8 sales?

9 Q. Yes.

10 A. Sales into California we stopped  
11 years ago. When we first got our original note,  
12 it wasn't even when this was filed, it was  
13 original just a -- some kind of like a notice of  
14 violation from them saying, hey, we think you're  
15 selling, you should stop. We stopped at that  
16 point, which was probably 2011 or 2012. It was  
17 years ago.

18 Q. Okay. Any more on that topic?

19 A. I believe that's it. Thanks.

20 Q. Given that you're losing money each  
21 month with your business, what are the future  
22 business plans for H&S Performance, LLC?

23 A. At this point, to finish this with the  
24 EPA and then we'll decide. Right now we're just  
25 hoping to get this wrapped up as quickly as

1 possible so we can move on with something else  
2 that's profitable.

3 Q. Any sense of what that might be?

4 A. Not yet.

5 Q. And is it your personal plan to stay  
6 with the company through that time frame?

7 A. I would like to, yes.

8 MS. CABALLERO: We would like to  
9 ensure that you review the transcript and  
10 identify if there are any errata, and then sign  
11 the transcript. The transcript will be sent to  
12 you in draft form once it's completed. And then  
13 we'd ask that you sign it, and if there's any  
14 errata, to have it certified.

15 MR. CLARKSON: We would like to  
16 request a copy of the transcript once it's  
17 finalized.

18 MS. CABALLERO: Sure. We'll be happy  
19 to do that.

20 Thank you very much for coming to  
21 speak with us today. Appreciate it.

22 MR. CLARKSON: We're off the record.

23 MS. CABALLERO: Off the record.

24 (The deposition was concluded at 1:40 p.m.)

25 \* \* \*



1 CERTIFICATE OF NOTARY PUBLIC

2 I, VICKIE LARSEN, the officer before whom  
3 the foregoing deposition was taken, do hereby  
4 certify that the witness whose testimony appears  
5 in the foregoing deposition was duly sworn by me;  
6 that the testimony of said witness was taken by  
7 me in stenotype and thereafter reduced to  
8 typewriting under my direction; that said  
9 deposition is a true record of the testimony  
10 given by said witness; that I am neither counsel  
11 for, related to, nor employed by any of the  
12 parties to the action in which this deposition  
13 was taken; and, further, that I am not a relative  
14 or employee of any counsel or attorney employed  
15 by the parties hereto, nor financially or  
16 otherwise interested in the outcome of this  
17 action.

18

19

20



21

Vickie Larsen, CSR/RMR  
Notary Public in and for  
the Commonwealth of Utah

22

23

My commission expires:  
24 November 8, 2015

25 Notary Commission No. 650091

1 A C K N O W L E D G E M E N T O F D E P O N E N T

2

3 I, BENTLEY HUGIE, do hereby acknowledge I have

4 read and examined the foregoing pages of

5 testimony, and the same is a true, correct and

6 complete transcription of the testimony given by

7 me, and any changes or corrections, if any,

8 appear in the attached errata sheet signed by me.

9

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18 \_\_\_\_\_  
DATE

\_\_\_\_\_  
BENTLEY HUGIE

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25

1 Barry Clarkson  
CLARKSON DRAPER & BECKSTROM  
2 162 North 400 East, Suite A-204  
St. George, Utah 84770  
3

4 IN RE: Examination Under Oath of Bentley Hugie  
5

6 Dear Mr. Clarkson:

7 Enclosed please find your copy of the  
8 deposition of BENTLEY HUGIE, along with the  
9 original signature page. As agreed, you will be  
10 responsible for contacting the witness regarding  
11 signature.

12 Within 30 days of receipt,  
13 please forward errata sheet and original signed  
14 signature page to counsel for Environmental  
15 Protection Agency, Kathryn Caballero.

16 If you have any questions, please do  
17 not hesitate to call. Thank you.

18 Yours,

19 Vickie Larsen, CSR/RMR  
Reporter/Notary  
20

21

22 Cc:Kathryn Caballero  
23  
24  
25

1 Capital Reporting Company  
1821 Jefferson Place, Northwest  
2 Third Floor  
Washington, D.C. 20036  
3 (202)857-3376

4 E R R A T A S H E E T

5 Witness Name: BENTLEY HUGIE

6 Deposition Date: March 9, 2015

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25	<u>BENTLEY HUGIE</u>	<u>DATE</u>
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